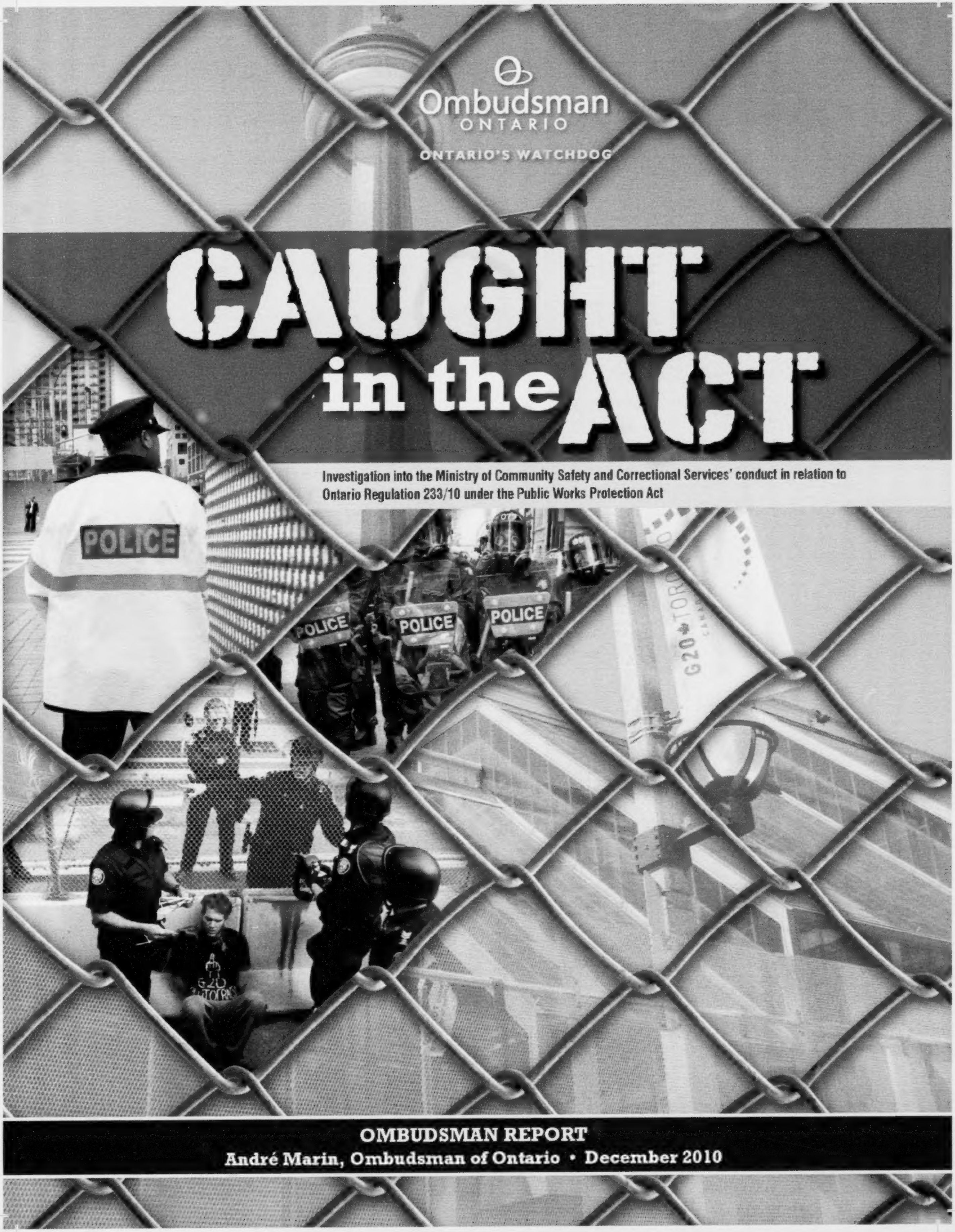
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CAUGHT in the ACT

Investigation into the Ministry of Community Safety and Correctional Services' conduct in relation to Ontario Regulation 233/10 under the Public Works Protection Act

OMBUDSMAN REPORT

André Marin, Ombudsman of Ontario • December 2010

Director
Special Ombudsman Response Team (SORT)
Gareth Jones

Lead Investigator
Domonie Pierre

Investigators
Adam Orfanakos
Rosie Dear
Mary Jane Fenton
Ciaran Buggle
Grace Chau
Elizabeth Weston

Early Resolution Officers
Maggie DiDomizio
Lorne Swartz

Senior Counsel
Laura Pettigrew

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Ombudsman Report

Investigation into
The Ministry of Community Safety and Correctional Services' conduct in relation to Ontario Regulation 233/10 under the *Public Works Protection Act*

"Caught in the Act"

André Marin
Ombudsman of Ontario
December 2010

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Executive Summary

1 *Regulation 233/10, passed to enhance security during the G20 summit, should never have been enacted. It was likely unconstitutional. The effect of Regulation 233/10, now expired, was to infringe on freedom of expression in ways that do not seem justifiable in a free and democratic society. Specifically, the passage of the regulation triggered the extravagant police authority found in the* Public Works Protection Act, *including the power to arbitrarily arrest and detain people and to engage in unreasonable searches and seizures. Even apart from the* Charter of Rights and Freedoms, *the legality of Regulation 233/10 is doubtful. The* Public Works Protection Act *under which it was proclaimed authorizes regulations to be created to protect infrastructure, not to provide security to people during events. Regulation 233/10 was therefore probably invalid for having exceeded the authority of the enactment under which it was passed. These problems should have been apparent, and given the tremendous power Regulation 233/10 conferred on the police, sober and considered reflection should have been given to whether it was appropriate to arm officers with such authority. This was not done. The decision of the Ministry of Community Safety and Correctional Services to sponsor the regulation was unreasonable.*

2 *Even had Regulation 233/10 been valid, the government should have handled its passage better. Regulation 233/10 changed the rules of the game. It gave police powers that are unfamiliar in a free and democratic society. Steps should have been taken to ensure that the Toronto Police Service understood what they were getting. More importantly, the passage of the regulation should have been aggressively publicized, not disclosed only through obscure official information channels. Perversely, by changing the rules of the game without real notice, Regulation 233/10 acted as a trap for the responsible – those who took the time to educate themselves about police powers before setting out to express legitimate political dissent.*

3 *All of this makes for a sorry legacy. The value in hosting international summits is that it permits the host nation to primp and pose before the eyes of the world. Ordinarily Ontario and Canada could proudly showcase the majesty of a free and democratic society. The legacy of the passage and administration of Regulation 233/10 is that we failed to do that well.*

***

4 Dave Vasey, a York University master's student, had never heard of the *Public Works Protection Act* before 4 p.m. on Thursday, June 24, 2010. In fact, it may have been the best-kept secret in Ontario's legislative history, although it wasn't a secret at all. The *Public Works Protection Act* had sat largely dormant on Ontario's statute books for more than 70 years, a hoary relic of World War II and veritable civil rights land mine waiting to be tripped. And Mr. Vasey certainly didn't know about Regulation 233/10 passed under that Act, to provide additional legal support for the security perimeter constructed for the G20 summit. Like the *Public Works Protection Act*, Regulation 233/10 was hidden in plain sight. It was announced not in newspapers, public service messages, or on ministry or police websites, but in the government's seldom-read and little-known electronic legislative database and then in the *Ontario Gazette*, a publication of interest only to civil servants, pundits and the occasional lawyer. Soon, however, Mr. Vasey would gain up close and personal knowledge of the *Public Works Protection Act* and Regulation 233/10.

5 Mr. Vasey and a friend, like many Torontonians, were simply curious about the massive steel grey security fence that wound its way through downtown streets. When they wandered near the fence to take a look that day, after taking part in a peaceful march, they were stopped by police and questioned. Standing on what he understood to be his rights, Mr. Vasey declined to provide identification. Soon after, he found himself under arrest by authority of the *Public Works Protection Act*. At least one other person was detained and charged under the Act in connection with G20 summit security, and numerous others were questioned and searched using the sweeping powers conferred by the Act, and activated by Regulation 233/10.

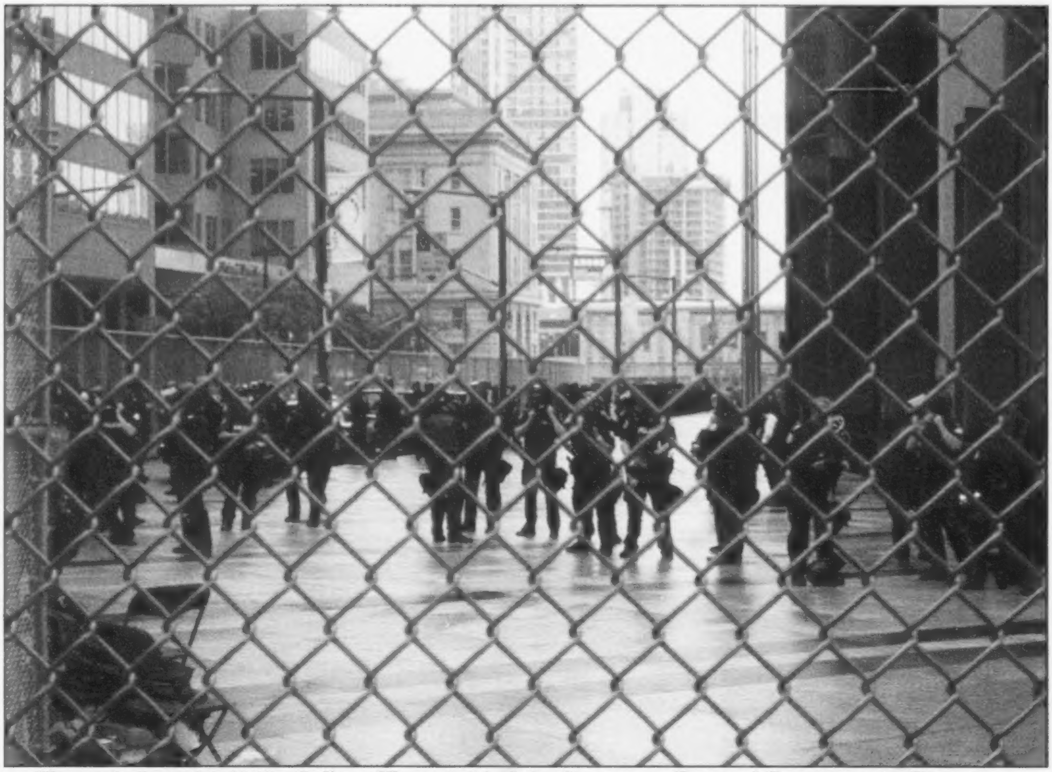

Figure 1: June 26, 2010 - Police officers behind the fence near Bay and Front streets, Toronto. (Photo by George Tulcsik) ***Note: All photos in this report were taken in 2010 in Toronto.***

6 While many of those stopped and questioned by police under the *Public Works Protection Act* in the week leading up to and during the G20 summit were involved in demonstrations, many others were simply Torontonians going about the activities of their daily lives. Rob Kittredge practiced law just outside the secure perimeter zone. When he went to take photographs of the zone one evening before the summit meeting, police searched him, examined his photographs, and purported to "ban" him under the Act. Nancy Ryan[1] was on her way home from grocery shopping, outside of the security fence, when police approached her and required that she submit her bags to a search.

7 It wasn't that the Ministry of Community Safety and Correctional Services didn't mean well in promoting the use of the Act through Regulation 233/10 to assist

---

[1] While some individuals provided consent for our Office to use their names in this report, many wished to remain anonymous. This person's name has been changed for reasons of confidentiality.

Toronto police in maintaining security during the summit. Typically, international summits attract protests, and protests can turn violent and even deadly. The world's leaders have also been subject to terrorist threats. But the security needs associated with protecting foreign dignitaries and the public from harm must be weighed against constitutionally entrenched rights. Protest is a democratic right. Ontario's citizens were entitled to the freedom to express themselves as well as from unreasonable search and arbitrary arrest during the G20 summit. Unfortunately, when it came to Regulation 233/10, the Ministry got the balance wrong.

8 Regulation 233/10's enactment triggered the *Public Works Protection Act*, a statute containing unusual, even extravagant police powers that could be – and in fact were – used to intimidate and arrest people who had done no harm. By designating gaps in the security perimeter as "public works" and reconfirming the authority to use the full powers of the Act within the exterior security zone, remarkable legal obligations were imposed on citizens seeking entry. A new landscape was created in which people were compelled to identify themselves and explain why they wanted to enter, sometimes even in writing, and they were required to submit to warrantless searches. And even if they were refused entry, changed their mind and wished to walk away, they were still required to identify themselves, answer questions and submit to a search. Those who declined could be arrested. Those who declined could even be prosecuted and jailed.

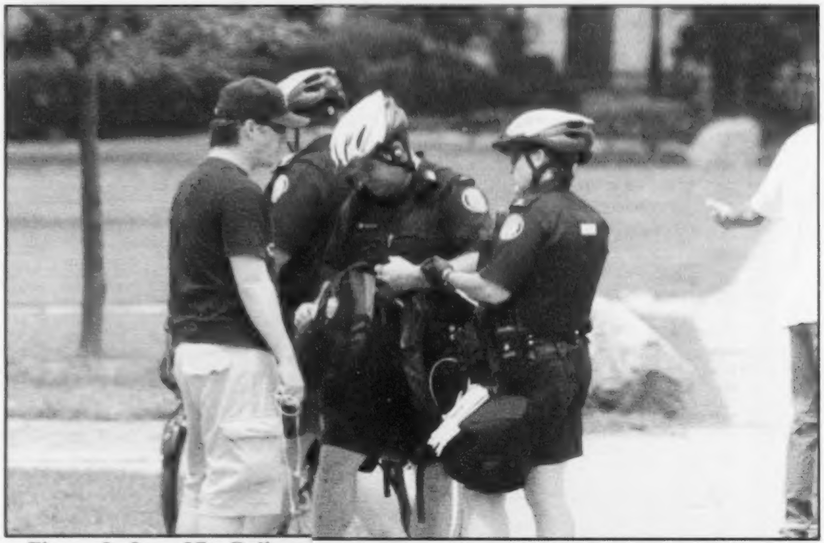

Figure 2: June 27 – Police search man near University Ave. and College St. (Photo by David King)

9 The only way to understand why the Legislature of Ontario would create a statute conferring police powers of this kind is to hearken to history. The *Public Works Protection Act* is a war measure. It was enacted in 1939 during an emergency session of the Legislature in the days following the declaration of war against Germany to deal with the threat posed by saboteurs against Ontario's infrastructure. Guards and peace officers were given the kind of authority one might expect in a time of war or emergency circumstance – the kind of authority that stretches, if not transgresses, constitutional rights. Yet here, in 2010, was the province of Ontario conferring wartime powers on police officers in peacetime. That is a decision that should not have been taken lightly, particularly not in the era of the Canadian *Charter of Rights and Freedoms*.

10 In fact, Regulation 233/10 was of doubtful constitutional validity. By creating security zones to bar entry and by authorizing arrest, it imposed definite limits on freedom of expression. It was therefore in *prima facie* violation of the *Charter* as a matter of law, likely in ways that are not constitutionally justifiable. Regulation 233/10 worked to trip the powers of the *Public Works Protection Act*, thereby enabling the arrest and muting of protesters and others who had done nothing wrong. The impact of Regulation 233/10 on freedom of expression was therefore almost certainly disproportionate. The government should have been wary of relying on a statute of doubtful constitutional validity in preference to dealing openly with the matter in the Legislature.

11 Even leaving the *Charter* aside, there is every reason to believe that the regulation was illegal. It was also almost certainly beyond the authority of the government to enact. The *Public Works Protection Act*, by its name and by its terms, was enacted to protect public property. Nowhere does the *Public Works Protection Act* authorize the government to enact a regulation to protect people rather than places. Nowhere does it grant authority to the government to confer additional police powers in order to protect internationally protected persons. There may be room for a law that does so, and this Act may have been used with the best of intentions, but it was used instrumentally and unnecessarily. The security perimeter it provided for would have been legal without it, and the existing common law and statutory authority of peace officers would have been ample to screen and prevent entry to those who might pose a threat to G20 participants. Simply put, Regulation 233/10 was of dubious legality and of no utility. It was unreasonable for the Ministry of Community Safety and Correctional Services to have promoted its passage.

12 The problems with the Ministry's handling of Regulation 233/10 are not confined to its passage. Both the follow-up to and the publication of the regulation were inadequate.

13 When the regulation was passed, the Ministry of Community Safety and Correctional Services had simply intended to restrict the Act's application to the area within the exterior security fence around the restricted zones housing foreign dignitaries. However, once the sleeping giant had been awakened, it could not be controlled. The Ministry was caught short when the Toronto Police Service misapprehended the boundaries of the security area designated under Regulation 233/10, and used the authority of the *Public Works Protection Act* to arrest people who were simply in the vicinity of the security fence. Moreover, throughout the weekend of the G20 summit, police exercised their powers under the Act well beyond the limits of the security perimeter, even after the misinterpretation on the part of the Chief of the Toronto Police Service had been corrected.

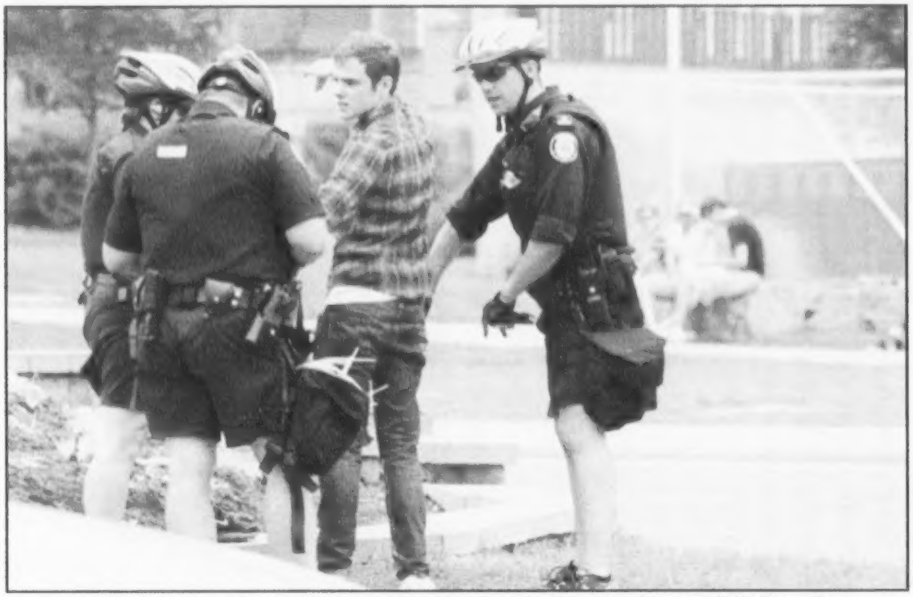

Figure 3: June 27 – Police search man near University Ave. and College St. (Photo by David King)

14 To be sure, the government of Ontario is not responsible for misunderstandings on the part of police officials. Yet even the power that was properly conferred by Regulation 233/10 was inordinate, and went well beyond the normal understanding of Ontario's citizens as to their obligations when dealing with police. The

Ministry, who had sponsored the regulation, should have satisfied itself that Toronto Police Service officers understood it and had been properly trained. This was not done. The Ministry simply handed over to the Toronto Police Service inordinate powers, without any efforts made to ensure those powers would not be misunderstood.

15 More importantly, it was grossly unreasonable and unfair for the Ministry of Community Safety and Correctional Services to let Regulation 233/10 fly under the radar the way it did. No one knew about the regulation until after the news of Mr. Vasey's arrest under the Act went viral. Not the public, not the press, not the administrators of the very city in which it was to be implemented. As our investigation revealed, quite remarkably, not even the Integrated Security Unit Steering Committee lead or key members of the Integrated Security Unit's G20 Public Affairs Communications Team knew of the regulation. While municipal authorities in Toronto did a fine job of ensuring that the public was aware of the traffic plan for the G20, nowhere was it announced that police officers would have extraordinary powers of compulsion and arrest. Municipal officials didn't inform citizens for the same reason that Mr. Vasey didn't comply with police requests on June 24, 2010: They simply didn't know about it. And the Ministry of Community Safety and Correctional Services did nothing to ensure that people would be aware of these powers so that they could govern themselves accordingly. Apart from insiders in the government of Ontario, only members of the Toronto Police Service knew that the rules of the game had changed, and they were the ones holding the deck of "go directly to jail" cards.

16 By any measure, a regulation conferring temporary police powers and imposing unusual obligations on citizens was unexpected. What was not unexpected was that, in the incendiary protest atmosphere of an international political event, individuals would question and even test the limits of police authority. Prudence alone would have required that the regulation be aggressively publicized in order to reduce the risk of unnecessary confrontation. Yet it was not.

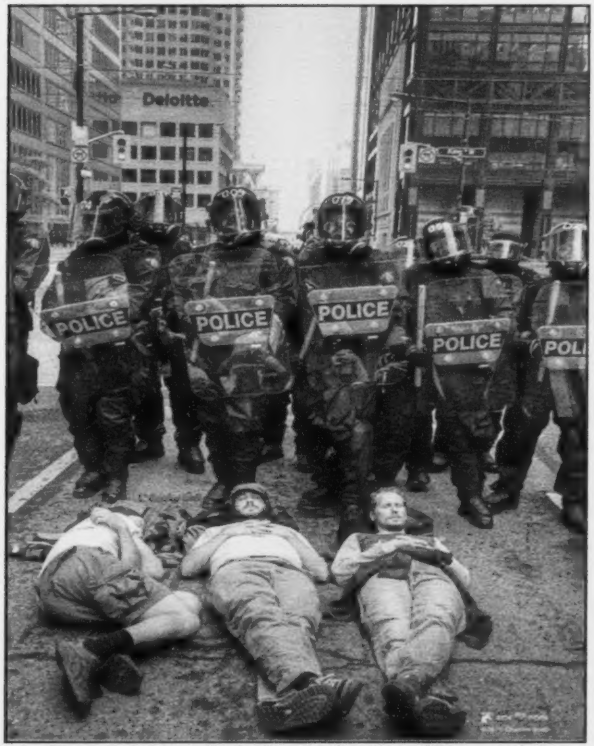

Figure 4: June 26 - Demonstrators lie in front of police officers at King and Bay streets. (Photo by Charles Bodi, ridemypony.com)

17 By changing the legal landscape without fanfare in this way, Regulation 233/10 operated as a trap for those who relied on their ordinary legal rights. Reasonably, protesters were trained by advocacy groups in "know your rights" sessions and advised through websites and brochures that they would not have to identify themselves or submit to search unless they were otherwise arrested. In fact, the inconspicuous Regulation 233/10 made it an offence for protesters to fail to identify themselves when approaching the secured area. Ensuring that protesters know their rights and the limit on those rights is something to be encouraged. Those who attempted to do so set themselves up. They and those they counseled were caught up in the Act's all but invisible web.

18 Given questions about its constitutional validity and legality, Regulation 233/10 deserved to be tested in the courts – not after it expired and had served its purpose, but before it was implemented. It is an infamous problem in protest situations that police tactics that control protesters cannot be challenged until those tactics have served their purpose – after it is too late. In the interests of ensuring a proper balance between civil rights and security, the Ministry of Community Safety and Correctional Services should have ensured that anyone intent on challenging security plans would have the opportunity to do so. The Ministry promoted the regulation. It should have stood up and ensured that those affected by it would be aware of it.

19 It is therefore my view that the Ministry of Community Safety and Correctional Services promoted a regulation that was of questionable legality and that conferred unnecessary police powers of questionable constitutionality. It was unreasonable to have done so. Moreover, the Ministry unreasonably and unjustly failed to ensure that the citizens of this province would be aware of the highly exceptional police authority that had been conferred.

20 The government has announced that the *Public Works Protection Act* will be reviewed in consultation with stakeholder groups. This is a step in the right direction. I have recommended that in the context of this review, the Ministry should take steps to revise or replace the Act. If it wants to claim the authority to designate security areas to protect persons, it should give consideration to creating an integrated statute that could be used not only to protect public works but that would clearly provide direct authority for ensuring the security of persons during public events when required. The range of police powers conferred by the Act should also be considered, including whether it is appropriate to give police the authority to arrest those who have already been excluded entry to secured areas, and the authority of guards and peace officers to offer conclusive testimony, whether right or wrong, about the location of security boundaries.

21 I have also recommended that the Ministry of Community Safety and Correctional Services develop a protocol that would call for public information campaigns when police powers are modified by subordinate legislation, particularly in protest situations.

22 On November 1, 2010, the Minister confirmed on behalf of the government his unequivocal commitment to act on my recommendations in a timely manner. I am satisfied with the Minister's response to my recommendations and will monitor the Ministry's progress in implementing them.

Securing the Summit

23 On June 19, 2008, Prime Minister Stephen Harper announced that Hunstville, Ontario would be the venue for the 2010 G8 Summit, a gathering of eight of the world's most powerful leaders to discuss issues of global concern. In the fall of 2009, the Prime Minister also signalled that Canada would host the 2010 G20 Summit, a meeting to discuss financial issues of international interest, attended by leaders from 19 countries and the European Union as well as representatives of the International Monetary Fund and World Bank. This second event was to take place in Toronto. After considering other sites – including Exhibition Place, the location preferred by the City of Toronto – on February 19, 2010, the federal government confirmed that the G20 summit would be held at the Metro Toronto Convention Centre. The G8 was to take place from June 25 to June 26, 2010, followed by the larger G20 summit from June 26 to June 27. The summits were co-ordinated and organized by the Summits Management Office, a federal government agency.

24 Traditionally, these international summit meetings have served as magnets for large-scale and at times violent protests. In 2001, a demonstrator was shot and killed by police during a protest at the G8 in Genoa, Italy. On the second day of the G8 meeting held in the United Kingdom in 2005, suicide bombers killed more than 50 people on the subway and on a bus in London. Four years later, at a G20 summit held in London, a newspaper vendor died after he was struck from behind with a police baton and knocked to the ground while police cordoned off protesters.

25 Given the high profile of these events, the history of terrorist threats upon world leaders, and the experience with summit protests in the past, planning for security presented a significant challenge to Canadian law enforcement officials. The job of ensuring security for the G8 and G20 summits was assigned to the Integrated Security Unit, which was initially established in 2008 to prepare for the G8. The ISU was a joint security team led by the Royal Canadian Mounted Police in partnership with the Toronto Police Service, the Ontario Provincial Police, the Canadian Forces and the Peel Regional Police.[2]

26 The RCMP had primary accountability for security at the summits. A Memorandum of Understanding, entered into by the ISU partners, confirmed that the RCMP was responsible for protecting international dignitaries and the "controlled access zones," sometimes referred to as "red zones," where they were to be contained. Local police services would be responsible for the areas immediately adjacent to the "controlled access zones," known as "interdiction zones" or "yellow zones," as well as for security in areas surrounding the interdiction zones, referred to variously as surveillance, security or traffic zones.

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[2] The North Bay Police Service was replaced by the Peel Regional Police Service, as a partner in the ISU, when the proposed venue for the G8 meeting was shifted from North Bay to Huntsville.

27 For the G8 summit, the Ontario Provincial Police was the local police service with jurisdiction. In the case of the G20 summit, the RCMP was to control an area within an interior security fence, to be constructed around the Metro Toronto Convention Centre, the attached Intercontinental Hotel, the Westin Hotel and the Royal York Hotel. The RCMP was also responsible for security at the Sheraton Hotel, where a number of dignitaries would be located. The Toronto Police Service was to have sole responsibility for the "interdiction zone," extending outward from the interior security fence to an exterior security fence. It would also be responsible for policing the surrounding areas. The Peel Regional Police Service was to secure the area around Pearson Airport and the RCMP was responsible for security at the airport terminal to be used by dignitaries.

28 The ISU headquarters were located in Barrie, but the RCMP also set up an office in Toronto for the G20 summit. The Toronto and Peel Regional Police Services maintained their own control centres at their respective stations.

29 On May 12, 2010, the Chief of the Toronto Police Service wrote to the Minister of Community Safety and Correctional Services requesting a designation under provincial legislation known as the *Public Works Protection Act*. In the letter, he explained that one of the cornerstones of the security plan for the G20 summit would be the establishment of a security perimeter in the area around the Metro Toronto Convention Centre, to be staffed by Toronto Police Service officers. The security perimeter would have gates allowing access into the security zone, which would be controlled by the Toronto Police. Those wishing access into this zone would be required to identify themselves, their destination and the purpose for entering the zone. The Chief noted that there were some businesses and residences within the security zone and that affected employees and residents would have the opportunity to obtain a registration card ensuring them quick passage through the security gates.

30 On June 3, 2010, regulation 233/10 was issued under the *Public Works Protection Act*. The regulation had the effect of reconfirming that the public works located within the interdiction zone were "public works" as defined by the Act, and designating three places within the interdiction zone that were not already public works as "public works." Under the *Public Works Protection Act*, guards appointed under the Act as well as peace officers have very board powers to require citizens to provide identification and submit to searches in connection with public works.

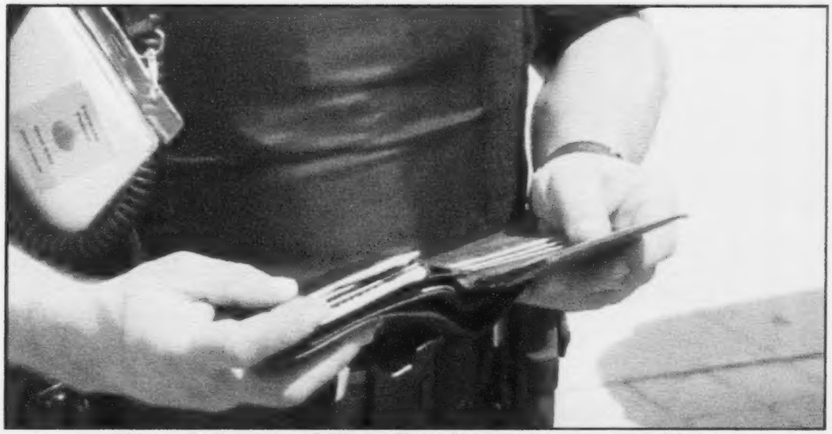

Figure 5: June 26 - Police officer inspects wallet of civilian.
(Photo still from YouTube video – for link, see Appendix A, No. 6)

31 In order to understand the context in which regulation 233/10 emerged as well as its significance, it is useful to first consider some of the events leading up to and taking place over the G20 summit weekend. While accounts as to what transpired differ substantially, what follows is a brief reconstruction based on media reports and information that we have obtained during our investigation.

G20 Land

32 Gatherings of world leaders like the G8 and G20 summits invite considerable international attention. Seeking to attract notice to a range of diverse social justice issues, various organizations had planned events to coincide with the summits in Ontario. While some groups pursued formal channels, openly publicized their plans, and obtained necessary permits for peaceful protests, law enforcement officials were well aware that the events would also attract individuals intent on pursuing more clandestine and violent methods of demonstration. Anarchist websites began to threaten militant and confrontational action, and on May 18, 2010, a bank in Ottawa was firebombed. The group claiming responsibility for this attack vowed that its members would be at the summit events to protest the "exploitation of people and the environment."

33 Toronto's citizens watched with curiosity as construction of the massive security fencing got underway on June 7. While initially bystanders snapped photographs of the fence unobstructed, by the week of the summit, many reported that they were questioned when they neared the security perimeter and were required by police to delete any images of it that they had captured on their phones or cameras.

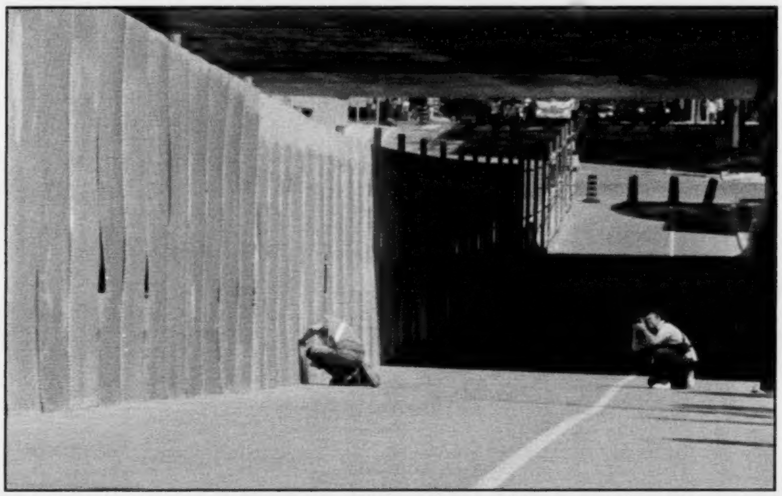

Figure 6: June 8 - Fence under construction on Lower Simcoe St. near Bremner Blvd. (Photo by Tomasz Bugajski)

34 Tensions in the city increased on June 22, when a Toronto man (and on June 24, his wife) was arrested in connection with the G20 summit and charged with explosives and weapons offences.

35 As security tightened around the city, many residents reported being stopped and questioned by police in the downtown core. On June 24, Regulation 233/10 took centre stage, when Dave Vasey, a York University master's student, was arrested for failing to show identification to police. After participating in a peaceful march, Mr. Vasey and a friend had gone to take a closer look at the security perimeter. They entered and left the security area without incident. However, as they walked along the street outside of the fence, away from the entrance, they were stopped by police, and asked to produce identification. While his friend's press pass satisfied police, Mr. Vasey refused to identify himself. In doing so, he followed the advice that had been widely distributed by civil liberties and advocacy groups, which counseled that demonstrators were not required to answer police questions or provide proof of identity. By the next morning, news of Mr. Vasey's arrest under the Act was everywhere, raising questions and inciting confusion about the scope of the "secret law" that appeared to give police new and extraordinary powers. At a press conference on June 25, the Toronto Police Chief tried to dispel the notion that the law was a secret, and advised that the powers granted under the *Public Works Protection Act* applied for a distance of five metres outside of the security fence.

Figure 7: June 27 - Passersby peer through the fence at Bay and Wellington streets. (Photo by Karin Stonehouse)

36 While the G8 summit in Huntsville took place without major incident, there were early signs that the G20 summit might not fare as well. During the first major protest in Toronto in the afternoon on Friday, June 25, more than 1,000 demonstrators embarked from Allan Gardens for an undisclosed location. Police on bicycles accompanied the protesters as they set out. Protest leaders made it clear that the march was peaceful, but police observers noted that a group of demonstrators outfitted in black was emerging from within the crowd. Police were familiar with the "black bloc" tactic in which individuals embedded within a peaceful protest will dress in black and disguise their identities as a prelude to the commission of acts of violence and vandalism. Some 30 people dressed in black and armed with rocks and golf balls soon broke off from this crowd and began moving toward the Coroner's office, where a military repatriation ceremony was in progress. In response, riot police were dispatched.

37 Police diverted the protesters from travelling further south towards the exterior security fence. By 6:30 p.m., the demonstrators began to return to Allan Gardens, where many camped out awaiting the next day's activities. Some also made their way over to the Eastern Avenue Detention Centre, an old film studio converted to a temporary jail for summit detainees, where it was reported that a deaf man was being held without access to a sign language interpreter, after being arrested for failing to obey a police order to move.

38 Early on the morning of Saturday, June 26, police were already in the process of rounding up suspected violent activists before the massive labour rally organized for that day got underway. It was reported that up to 30,000 people joined the labour march that afternoon. However, by around 3:45 p.m., some individuals within the crowd once again donned black apparel and broke away from the peaceful protest. This time, the "black bloc" militants set off on a 90-minute crime spree, during which store windows were smashed, businesses looted and three or four police cruisers were vandalized and set on fire. The police did not engage the group at this point, later explaining that they chose to focus their efforts on public safety, as opposed to containing property damage.

Figure 8: June 25 - Protesters march along College St. (Photo by Mark Kari)

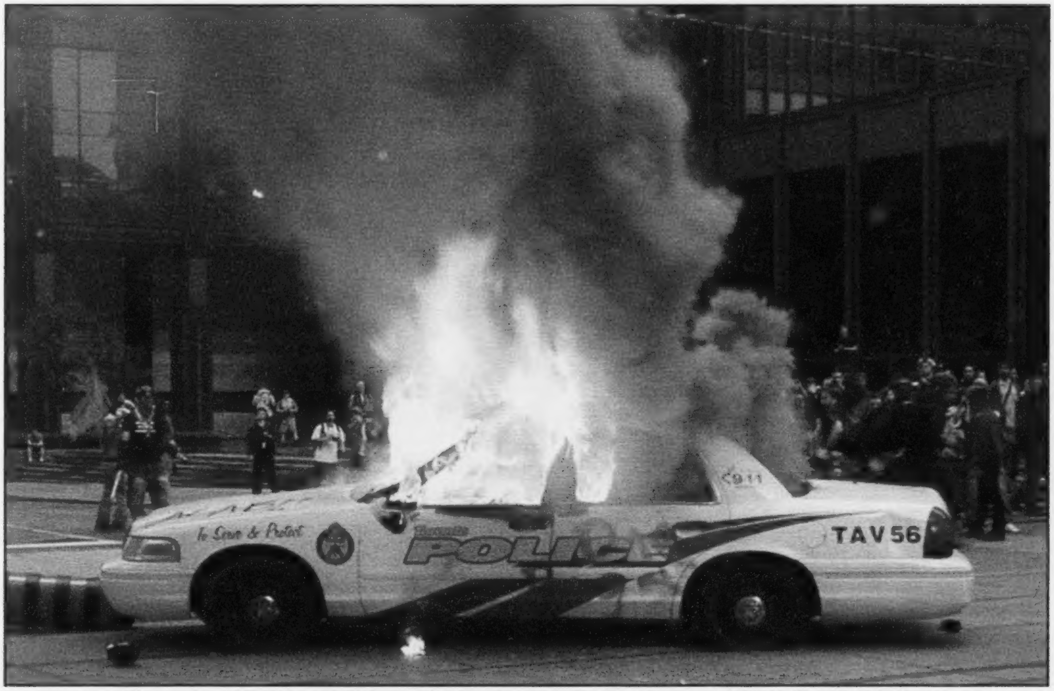

Figure 9: June 26 - Police car in flames on Bay St. (Photo by Stephen Forbes)

39 The individuals responsible for the carnage then apparently regrouped on the south lawn of Queen's Park and quickly discarded their black apparel, blending back into the crowd. Shortly after, police moved in en masse and ordered the protesters assembled at Queen's Park to leave. Some left immediately, but many remained, believing that since the police had earlier advised that Queen's Park was a "designated speech area," they had a right to stay. It was reported that police used force to disperse the crowd, and there are accounts of pepper spray and rubber bullets being deployed. A number of arrests were made at that time.

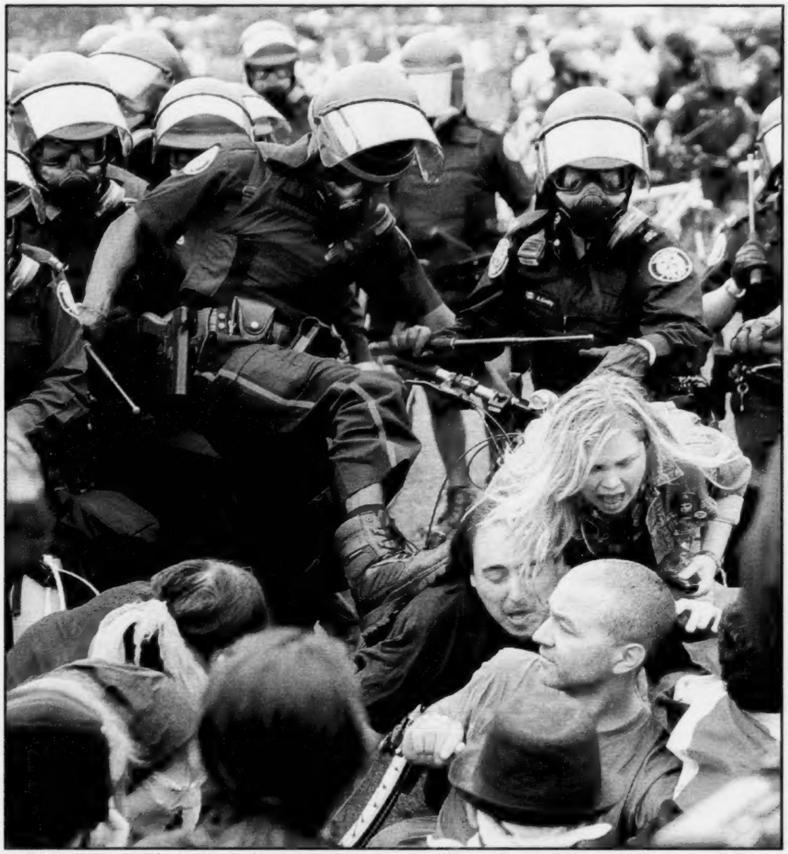

Figure 10: June 26 - Police move in on protesters gathered on the south lawn of Queen's Park. (Photo by Richard Lautens, Toronto Star)

40 While the Toronto Police Service was in charge of maintaining order in the city, apart from the "red zones" controlled by the RCMP, thousands of officers from all over the country had been deployed to assist. Back at ISU headquarters in Barrie, commanders were awaiting word on what additional resources Toronto required in the face of the mounting conflict downtown. The former RCMP official who was in charge of ISU security at the time advised us that by June 24 the Toronto Police Service representative on the ISU steering committee had left the ISU building, and that by noon on Saturday, June 26, communications between ISU and the Toronto Police had broken down. By 4 p.m., the Toronto Police Service had gone completely off the ISU radar. The ISU placed multiple calls to its Toronto Police contact, but it took 45 minutes of trying before they connected. By that point, the situation was critical, and the ISU was asked to take over security in the interdiction zone. While Toronto police focused on regaining control of city streets, at 4:45 p.m. the ISU quickly began deploying more than 1,000 officers from the OPP, RCMP and Peel Region to police the security perimeter. We were advised that, in an unprecedented move, RCMP officers left the nation's capital "bare" as they trekked south to provide relief for Toronto.

41 The protests in Toronto continued into Saturday evening. Around 10 p.m., Toronto riot police surrounded demonstrators at the Novotel on The Esplanade. Over the course of a few hours, police systematically arrested all of those involved in the protest, and by some accounts innocent bystanders as well.

42 Around 10 a.m. on Sunday, June 27, Toronto police raided a University of Toronto gymnasium being used as a hostel for out-of-town protesters who were primarily from Montreal, and reportedly arrested nearly 100 people. By that point, hundreds of arrests had been made and the area around the temporary detention centre had become a gathering point for some 200 protesters, showing solidarity for the detainees. Some of these protesters were in turn arrested, in one case, reportedly after being shot with rubber bullets.

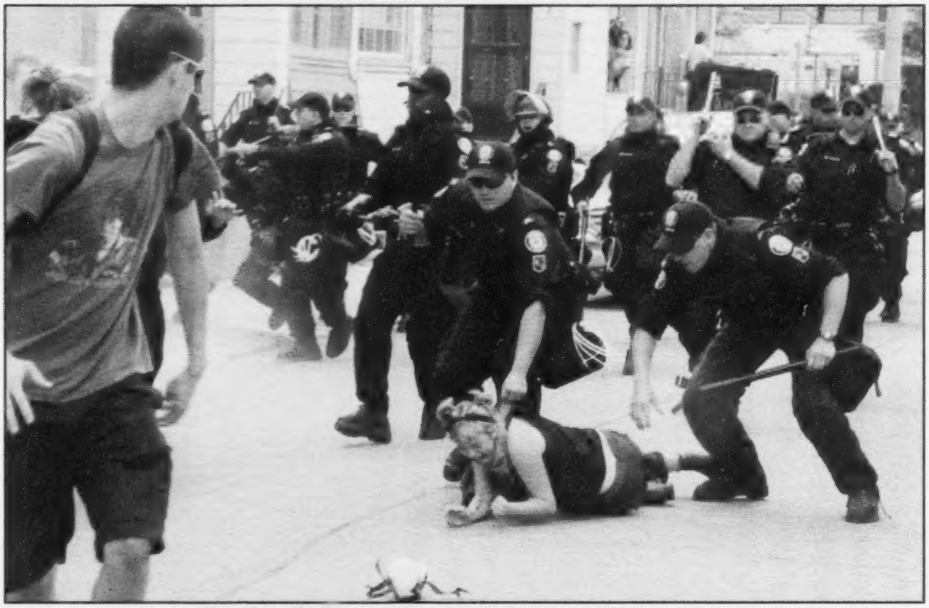

Figure 11: June 27 – Natalie Gray falls with police in pursuit outside the Eastern Ave. detention centre. (Photo submitted by Natalie Gray)

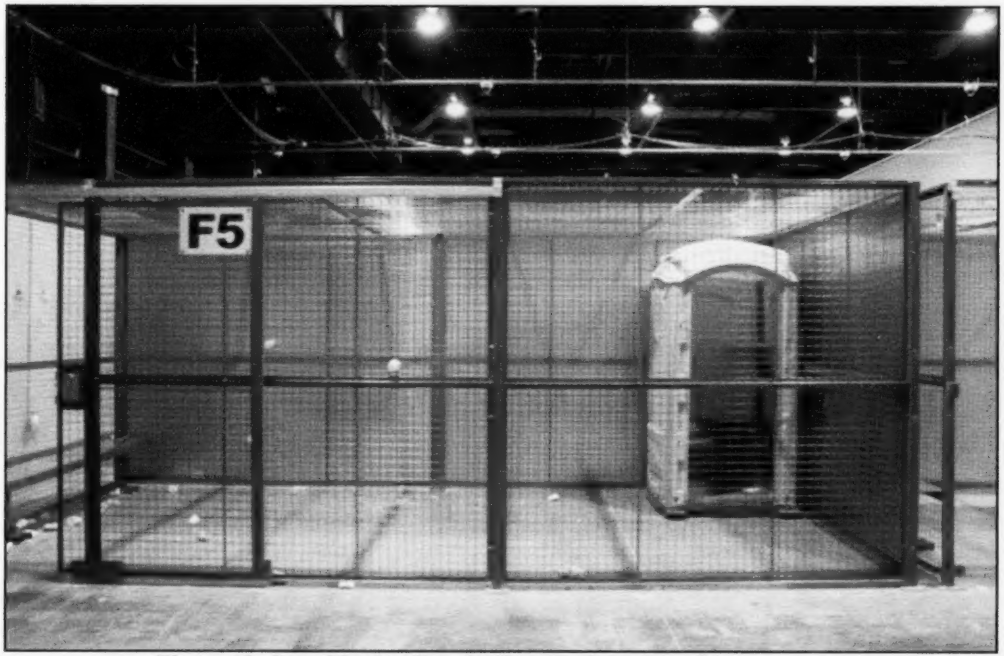

Figure 12: June 29 - A cell at the Eastern Ave. detention centre.
(Photo by Tim Shore, blogto.com)

43 On Sunday afternoon, a bicycle protest wound its way through the city. Later, Toronto police, apparently acting on reports that criminals had infiltrated a group of protestors, surrounded and contained a crowd of up to 250 in a "kettling" maneuver, at Queen St. and Spadina Ave. around 6 p.m. Over the course of the next few hours, protesters, journalists, casual observers and bystanders stood in the driving rain while individuals were selectively extracted from the crowd for arrest. The entire episode was televised and dramatically displayed on social networking websites as it unfolded. By 9:40 p.m., the Toronto Police Chief ordered the remaining crowd to be unconditionally released.

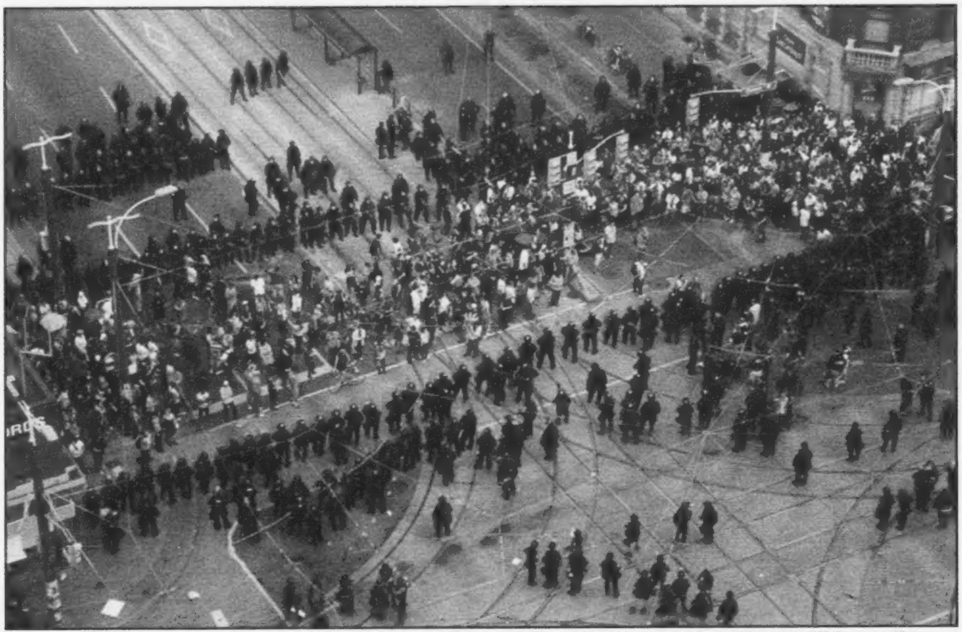

Figure 13: June 27 – Protesters at Queen St. and Spadina Ave. being "kettled" by police. (Photo by Jonas Naimark)

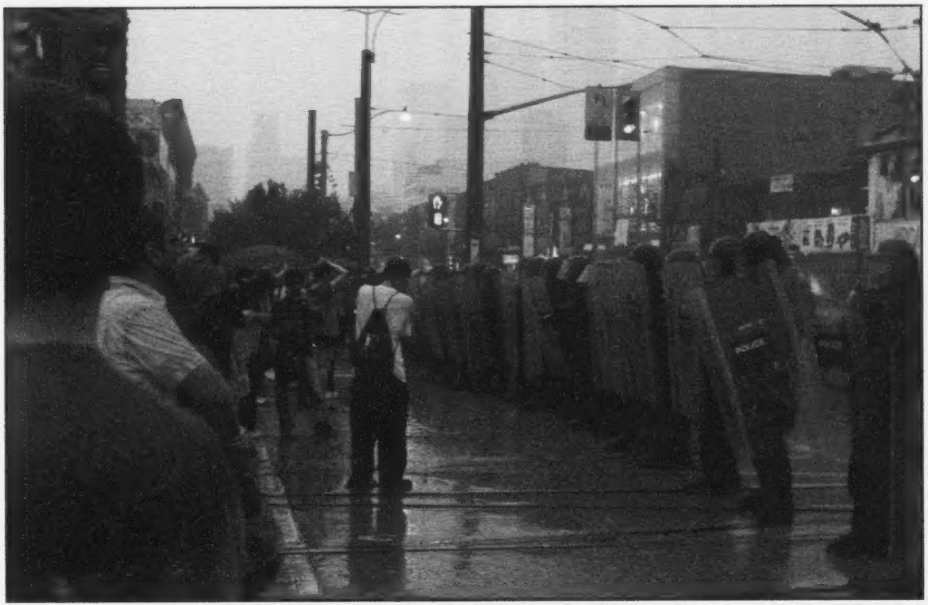

Figure 14: June 27 – Ground-level view of police "kettling" of protesters at Queen St. and Spadina Ave. (Photo by Rob Kittredge)

44 Stories circulated throughout the G20 weekend of citizens being stopped and searched at various locations in the downtown core, often simply because they were wearing an item of black clothing. A number of people also reported that police cited the *Public Works Protection Act* as authority to conduct searches and require identification, despite the fact that they were nowhere near the security fence. Police confiscated a large variety of objects during the summit, including items such as umbrellas, eyewash, and goggles. The Toronto Police Chief later displayed an impressive array of "weapons" seized from protesters at a press conference on June 29 – although some of the collection, including a crossbow and chainsaw, were later reported to have been unrelated to the event.

45 In the days leading up to and over the course of the G20 summit weekend, some 1,105 people were arrested; the largest mass arrest in Canadian history. Many individuals were picked up for breach of the peace; others faced a variety of Criminal Code offences, and at least two found themselves in violation of the *Public Works Protection Act*. Of those initially detained, just under 700 were eventually released without charge. Many of the charges against the 315 accused in connection with the G20 summit have been stayed or withdrawn, including with respect to nine individuals who were apparently listed in error. On October 14, 2010, another 116 charges were dropped, leaving only 99 cases before the courts in relation to the summit. Even Mr. Vasey found, when he attended court on July 28, that there was no record of his charge under the *Public Works Protection Act*. A Toronto Police spokesperson has since stated that the charges were "lost in the mail."

46 After the summit ended, the Toronto Police Service continued to search for ringleaders of the G20 riots, and made a number of high-profile arrests.

47 An estimated 20,000 security personnel were involved with security for the two summits, including private security guards contracted by the federal government. The staggering cost for hosting the events was estimated at more than $1 billion. The nearly 10 kilometers of security fencing around downtown Toronto alone cost an estimated $9.4 million.

Figure 15: June 28 – CN Tower behind the fence. (Photo by Alfred Ng)

48 As far as federal organizers were concerned, the summits were a success, although admittedly an inconvenience for Toronto. For many Ontarians, the flood of images of Toronto over the G20 weekend, displayed in the news and live on the Internet, was surreal and disturbing. Along with the burning police cars and scenes of rioters smashing windows, there was the infamous video of a police officer threatening to arrest a protester for assault if she touched him with the soap bubbles she was blowing, and of another masked officer using a crowd control weapon to shoot a projectile directly at a woman who was apparently standing peacefully in front of him, knocking her to the ground. The sheer volume of arrests related to the G20 and the manner in which these were executed was unprecedented and, for many, alien to the traditional Canadian persona. As one eminent lawyer and academic observed, these events "might well have happened during a demonstration in Eastern Europe, but in the old days, but not here. It's a complete abuse of process. Somebody should have been watching."[3]

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[3] Interview of Julius Grey, (14 October 2010) on *The National*, CBC Television, Toronto.

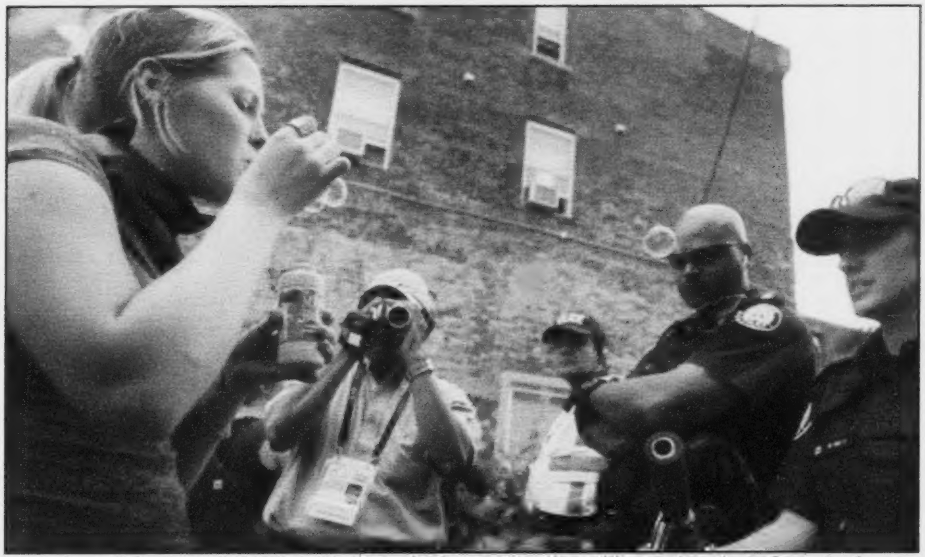

Figure 16: June 27 - Protester blows bubbles in front of police officers shortly before she is arrested. (Photo by Steve Russell, Toronto Star)

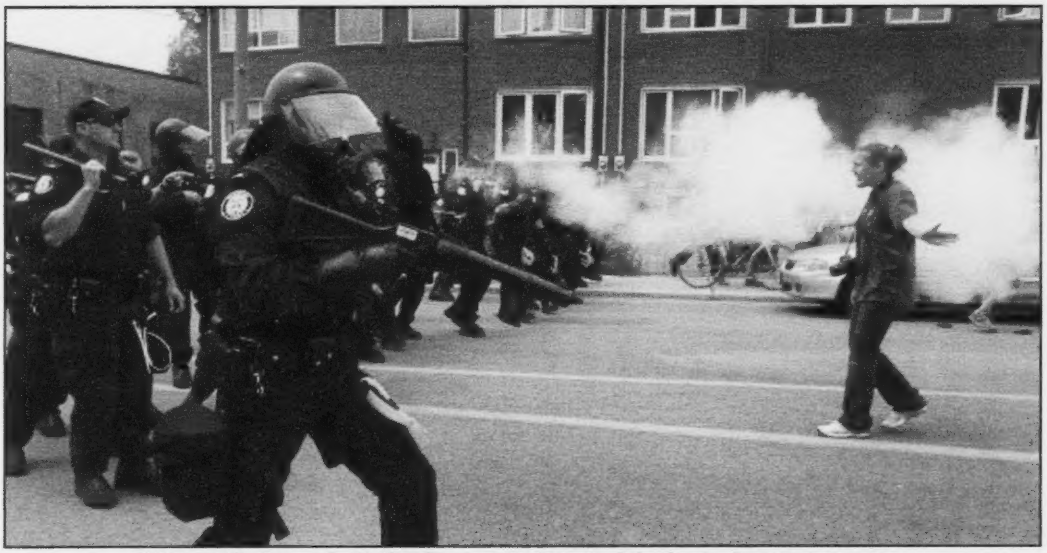

Figure 17: June 27 - Police fire a crowd control device at demonstrators. (Photo by Bernard Weil, Toronto Star)

Over the Summit and Beyond

49 While the G20 summit ended late Sunday afternoon, June 27, 2010, its impact continued to be felt long afterward.

50 By Monday, June 28, the G20 delegates had left Toronto, and the security barriers were in the process of being dismantled. But the aftermath of the G20 saw continued protests downtown. This time, the focus was not on gaining the attention of world leaders, but on calling for censure and public inquiry into the conduct of law enforcement officials in connection with the summit. Police were criticized for failing to intervene as "black bloc" activists damaged, destroyed and absconded with millions of dollars worth of property, for the tactics they deployed to contain protesters after that rampage, for their use of force and massive arrests that took place throughout the weekend, and for the poor conditions at the temporary jail.

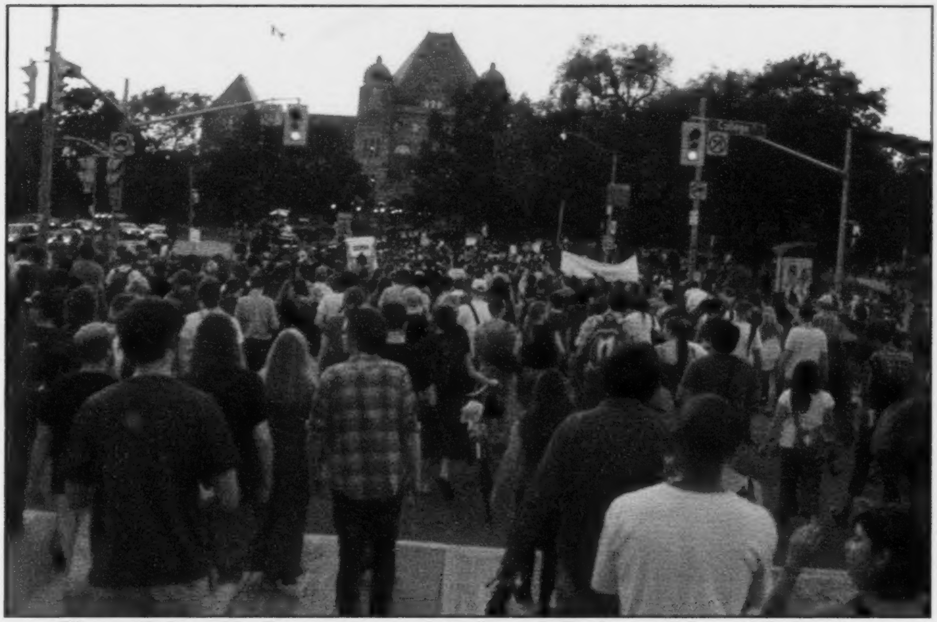

Figure 18:June 28 - Protesters march to Queen's Park to call for public inquiry. (Photo by George Tulcsik)

51 By June 29, when the Chief of the Toronto Police Service held his post-summit press conference, it was also clear that there had never been a "five-metre rule," applying to the area around the security fence, leading many to charge that the public had been deliberately misled. A number of MPPs also denounced the fact that sweeping police powers appeared to have been conferred by way of a technical regulation, without notice, consultation or debate.

52 There are mixed reviews on how the government, including its police agents, did with respect to the G20 summit. While Toronto city council unanimously voted to commend the outstanding work of its police chief and his officers during the summit, and an Angus Reid poll disclosed that 73% of Torontonians and 66% of Canadians believed that the treatment of protesters was justified, there have been repeated calls by advocates as well as politicians for a full inquiry into the surrounding events. While the federal government initially displayed no appetite for a G20 post-mortem, two parliamentary Standing Committees are currently holding hearings to consider costs and tactics relating to the summits. The Commission for Public Complaints Against the RCMP has commenced an investigation relating to RCMP conduct during the summits. A number of discrete reviews relating to the events surrounding the G20 summit have also been launched at the municipal and provincial levels.

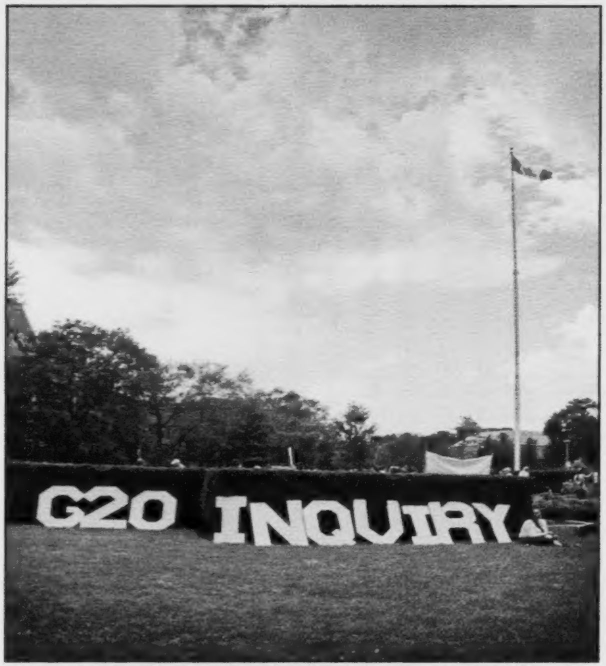

Figure 19: July 17 - Sign calling for G20 inquiry at civil liberties event. (Photo by Jackman Chiu)

53 On June 29, the Toronto Police Service advised that its Summit Management After Action Review Team (SMAART) would study, review and report on all aspects of summit policing in Toronto. On July 6, the Toronto Police Services Board announced that it would establish an independent civilian review focusing on matters of governance in relation to the G20 summit, and on September 23, the Board appointed retired Ontario Court of Appeal justice, Hon. John W. Morden, to conduct this inquiry.

54 On July 22, the Office of the Independent Police Review Director, after receiving 275 public complaints, announced that it would review systemic issues relating to allegations of unlawful searches, arrests and improper detention against police during the G20 summit.[4]

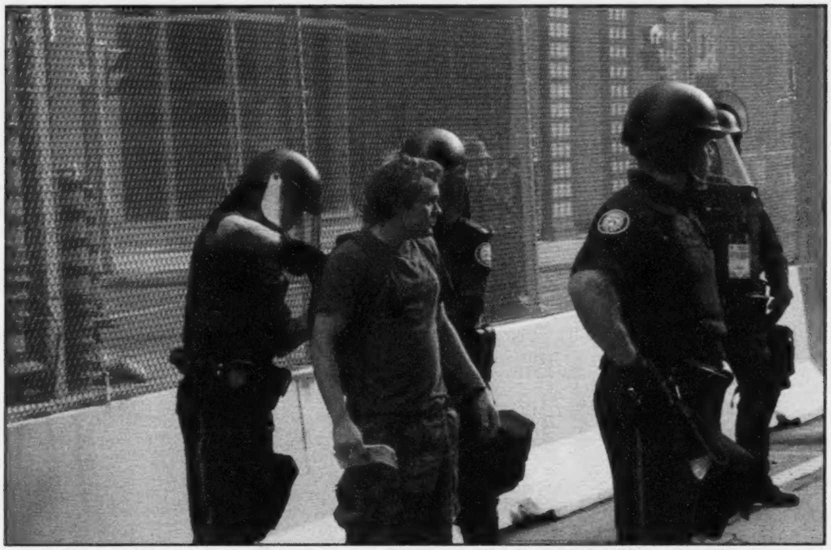

Figure 20: June 26 - Police search man's backpack on King St. West. (Photo by George Tulcsik)

55 The province's Special Investigations Unit also investigated six incidents in which protesters were injured by police during G20-related protests on June 26. In late November, the SIU director announced that no charges would be laid against any officers. Although he found excessive force had been used in two cases, the SIU was unable to identify the officers involved.

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[4] By October 5, the OIPRD had received more than 320 complaints. Interview of Gerry McNeilly (OIPRD Director) by Paul Jay (5 October 2010) on *The Real News*, The Real News Network. http://www.therealnews.com .

56 In addition, on September 22, the province announced that former Ontario chief justice and attorney general, Hon. Roy McMurtry, would lead a review of the *Public Works Protection Act*, scheduled for completion next spring.

57 On October 5, NDP leader Andrea Horwath – and on October 19, MPP Peter Kormos – introduced private member's bills calling for an inquiry to examine all aspects of government and law enforcement decision-making relating to the G20 summit.[5]

58 Civilian organizations have also responded to the events of the G20 weekend. The Canadian Civil Liberties Association (CCLA) prepared a preliminary report of observations during the summit, titled *A Breach of the Peace*, and a citizens' group announced that it would conduct a "people's inquiry" called "Don't Wear Black" to allow Toronto residents and visitors to tell their G20 stories. The CCLA and the National Union of Public and General Employees also co-hosted public hearings in November to examine police activity during the summit. Two class action lawsuits have been launched – one seeking $45 million in damages for those wrongfully arrested, detained, imprisoned or held by police during the G20 summit; the other claiming $115 million for those detained and arrested and business owners whose properties were vandalized. A third lawsuit has been filed by a woman alleging that she was shot twice by police using rubber bullets. She is seeking $1 million in damages for assault, battery, unlawful arrest and detention, malicious prosecution and the violation of a number of *Charter* rights and freedoms. In November, a Montreal-based community organizer, arrested during the summit, commenced a constitutional challenge to his bail conditions.

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[5] Bill 111, *An Act to require a public inquiry into government action and spending in connection with the G20 Summit*, 2nd Session, 39th Leg., Ontario, (1st Reading:5 October 2010). Bill 121, *An Act to require a public inquiry into government action and spending in connection with the G20 Summit*, 2nd Session, 39th Leg., Ontario, (1st Reading:19 October 2010, 2nd Reading: lost on division, 4 November 2010).

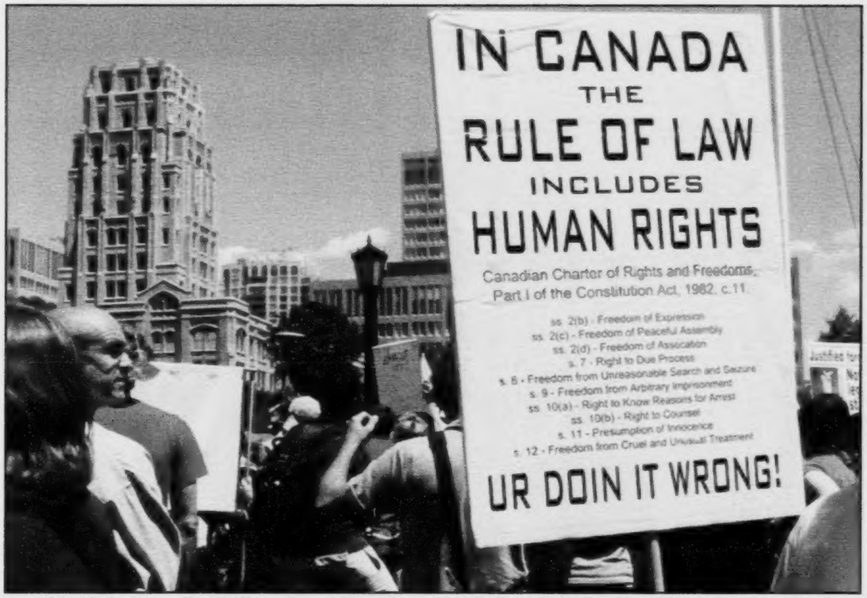
IN CANADA
THE
RULE OF LAW
INCLUDES
HUMAN RIGHTS
Canadian Charter of Rights and Freedoms,
Part I of the Constitution Act, 1982, c.11
ss. 2(b) - Freedom of Expression
ss. 2(c) - Freedom of Peaceful Assembly
ss. 2(d) - Freedom of Association
s. 7 - Right to Due Process
s. 8 - Freedom from Unreasonable Search and Seizure
s. 9 - Freedom from Arbitrary Imprisonment
ss. 10(a) - Right to Know Reasons for Arrest
ss. 10(b) - Right to Counsel
s. 11 - Presumption of Innocence
s. 12 - Freedom from Cruel and Unusual Treatment
UR DOIN IT WRONG!

Figure 21: July 10 - Civil liberties "day of action," Queen's Park. (Photo by Sarah Gould)

59 In the days following the G20 weekend, my Office received a constant stream of complaints and submissions related to the summit from a diverse range of individuals and groups, including concerned York University professors, the Ryerson University Anti-Racism Coalition, and a member of provincial parliament. Many of the complaints that we received were from people who were directly affected by the events over the G20 weekend. One of the common complaint themes surrounded the lack of transparency, communication and clarity around Regulation 233/10. On July 8, 2010, I notified the Ministry of Community Safety and Correctional Services that I would be investigating its involvement in the origin and development of Regulation 233/10 under the *Public Works Protection Act*, and its subsequent communication on that regulation with stakeholders.

Complaints

60 My Office received a multitude of complaints relating to a variety of issues concerning the G20 summit, including complaints about:

- the process used by the Ontario government to pass Regulation 233/10 under the *Public Works Protection Act*, including the absence of public debate, transparency and consultation;

- the lack of notice to the public about the regulation and its effects on the general public;

- the lack of clarification by government and police around the regulation and the powers sought to be conferred by that regulation, after its existence came to light;

- the conduct of police officers during the period June 24-27 in the exercise of their powers under the regulation, including concerns about wrongful arrests and *Charter* violations;

- the alleged wrongful arrests of demonstrators at government-designated speech sites, including Queen's Park North;

- the treatment of detainees held at the Eastern Avenue Detention Centre, including allegations of human rights violations;

- bail conditions, including bail amounts and time between arrest and bail hearings, and between bail hearings and release, for those detained during the G20 weekend;

- the absence of a complaint mechanism for issues related to the G20, including in relation to the regulation and police conduct.

61 In total, we received 167 complaints, including more than 100 complaints, information submissions and expressions of support from members of the public, MPPs and various civil liberties organizations and groups, which were received after we publicly announced our investigation.

62 A number of the complainants who approached our Office gave dramatic first-hand accounts of their experiences with police over the G20 weekend. John Pruyn, a 57-year old Revenue Canada employee from Thorold, Ontario, had come to Toronto to participate in Saturday's labour march and rally. Mr. Pruyn is an amputee and walks with the assistance of walking sticks. After participating in the march down University Ave., he returned to the designated speech area at Queen's Park with his daughter, and sat down to rest. A few minutes later, police arrived, yelling "Move!" He told us his daughter and two young men sitting next to him jumped up and tried to pull him to his feet, but he lost his balance and fell. Mr. Pruyn's daughter asked police to wait while she helped him up, explaining that he was an amputee. Suddenly he was face down on the ground with officers piled on top of him. When he was later unable to obey police commands to walk without the aid of his walking sticks, an officer grabbed his artificial leg and "yanked it off." He recalled the officer shoving the leg at him and telling him to put it back on. When he explained that he was unable to do so, he was dragged backwards to the paddy wagon. He claimed he was kicked several times, and heard officers say he was resisting arrest and in possession of a weapon. He was searched and detained for several hours before he was released without charge. He told us police still have his glasses, walking sticks and $33 he had in his pocket when he was detained.

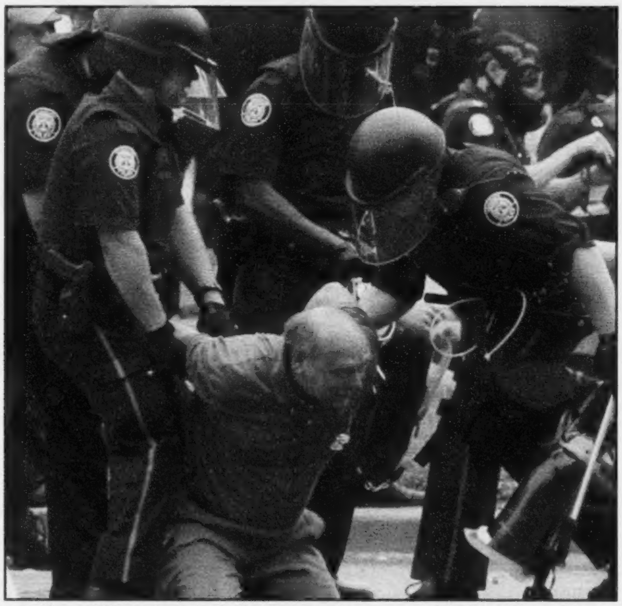

Figure 22: June 26 - Police officer holds John Pruyn's prosthetic leg (far right) during his arrest at Queen's Park protest. (Photo by Gerry Broome, AP)

63 Many of those who contacted us said they had been stopped, asked for identification and searched in connection with the G20 summit. Some of the searches occurred within the "interdiction zone," others within five metres of it, and still others well beyond the security perimeter. Complainants generally expressed confusion regarding the origins and scope of Regulation 233/10 under the *Public Works Protection Act*, and the exceptional powers it apparently conferred on police.

64 During the week leading up to the summit, Rob Kittredge, a lawyer and hobby photographer who worked just outside of the secure area, was taking photographs within the security zone one evening after work. According to Mr. Kittredge, two police officers approached him and asked what he was doing. He politely declined to provide identification, believing that he was within his rights to do so. The officers told him that under the *Public Works Protection Act* they could search him without a warrant and demand that he show identification. He answered that perhaps the best way to end the situation would be for them to use their authority to take his wallet out of his front left pocket and look at his identification. The officers then proceeded to subject him to a complete search, including reviewing the photographs on his camera, proclaiming them to be "suspicious." After the search, one of the officers advised him that he was "banned" under the authority of the Act. When Mr. Kittredge asked what area he was banned from, the officer failed to respond.

65 We spoke with Mr. Vasey, who was arrested on June 24 under the *Public Works Protection Act* for failing to provide identification. Mr. Vasey was close to the fence but not near an entry point when he was stopped. He advised us that he had never heard of the Act before this incident. In fact, complainants consistently told us that the first time they learned of its existence was after Mr. Vasey's arrest was publicized. Some even said they deliberately avoided going anywhere near the fence after hearing of the "five-metre rule" – only to find themselves subject to questioning and search at other locations around the city.

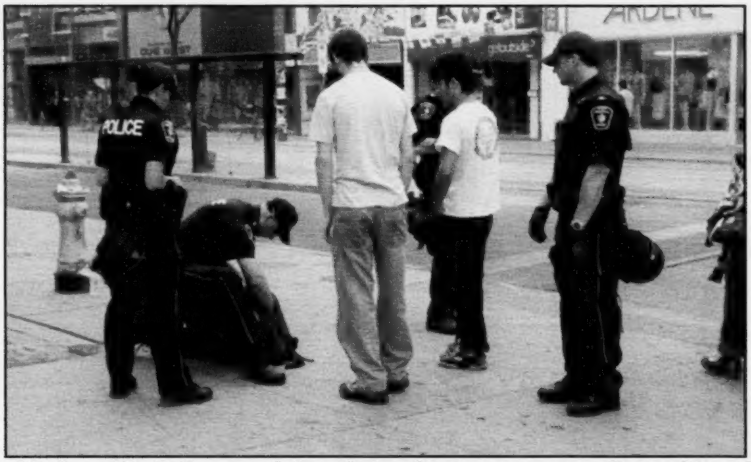

Figure 23: June 27 - Police search bags belonging to two men on Queen Street West. (Photo by Timothy Neesam, CBC)

66 Some were stopped close to the fence, under the express authority of the *Public Works Protection Act*. Police asked 26-year-old Aaron Adams for identification on Friday, June 25, at the York Street underpass. He said he was told that because of "an amendment made to the *Public Works Protection Act,*" and because he was within five metres of the security fence, he was required to either show identification and submit to a search, or face arrest. Similarly, police stopped 36-year-old Vladimir Cubrt as he travelled west on his bike on Wellington St. between Bay and York streets on Saturday, June 26, around 6 p.m. He said officers told him they had the authority under the *Public Works Protection Act* to search him because he was within five metres of the security perimeter. He was warned that he could be arrested if he failed to comply. Police detained 23-year-old Walter Stone[6] the same day, while he was on his way home after watching a World Cup soccer telecast with friends. He was searched and arrested on weapons charges, which were subsequently withdrawn. His Supplementary Record of Arrest confirms that he was searched under the *Public Works Protection Act*. All three men maintain that they were not attempting to enter the secure area when they were stopped.

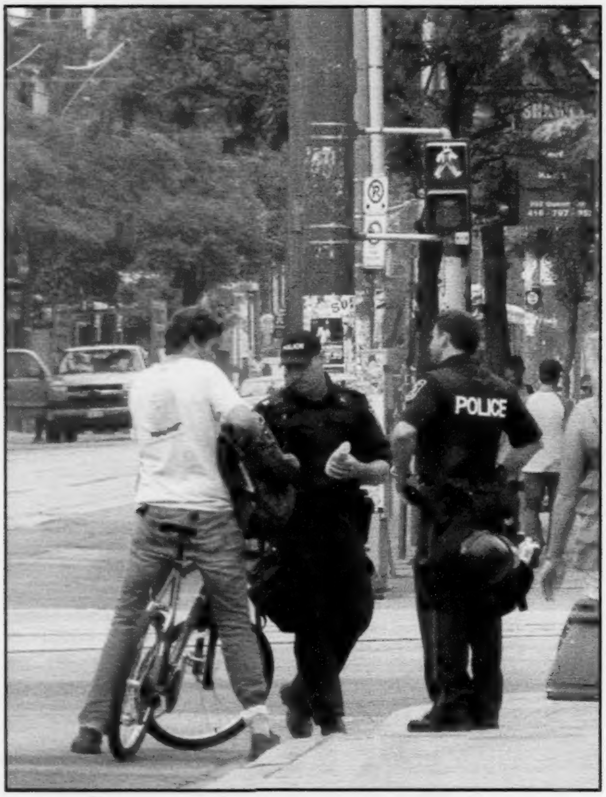

Figure 24: June 26 - Police search cyclist near University Ave. (Photo by Alfred Ng)

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[6] This person's name has been changed for reasons of confidentiality.

67 According to numerous reports, police routinely searched protesters converging at Allan Gardens, starting as early as Friday, June 25. One woman who came forward told us that when she was there on Sunday, June 27, she overheard police specifically advising people they were searching backpacks under the authority of the *Public Works Protection Act* – despite the fact that the security zone was more than two kilometres away and the Toronto Police Service had been aware since Friday that Regulation 233/10 was only intended to apply in the area within the perimeter fence.

68 In many instances, complainants advised us that they were not told what authority police were acting under when they were stopped. Twenty-seven-year-old Nancy Ryan was walking home on Sunday, June 27, after shopping at Loblaws at Queens Quay. She claims police asked to search her grocery bags when she was about 200 metres away from the security fence. She was allowed to pass only after showing identification. That same day, 60-year-old David King, a photojournalist and college instructor, was searched by police at the corner of Queen St. and Spadina Ave., and Parkdale resident Alexander Wolfson had to ask a family member to bring him his identification after police stopped him in his own neighborhood.

69 For the estimated 40,000 people[7] who either worked or resided in "the zone," the situation was no less confusing. A number of workplaces within the interdiction zone remained open over the G20 weekend. A man who worked in the CBC building on Front St. over the course of the G20 weekend expressed frustration over the information provided to those who had to work in the zone:

> We didn't understand from what they were communicating what the zone was, what they wanted from us outside the zone, what they wanted from us inside the zone, what the implications were if we didn't or couldn't comply with what they wanted from us, particularly around the area of identification.

70 To illustrate the uncertainty that those in the zone had to contend with, he gave the example of a colleague who stepped outside the building for a quick cigarette break, only to be approached by police who told her she could not leave the building at any time without identification.

71 Unlike the Ministry of Community Safety and Correctional Services, which comes squarely within my Office's authority, police services are part of the MUSH sector[8], which operates beyond Ombudsman scrutiny. Accordingly, our Office had to refer Mr. Pruyn and other complainants who were concerned primarily about the conduct of police to the Ministry of the Attorney General's Office of the Independent Police Review Director. As courts are beyond my Office's jurisdiction, we were also unable to assist with complaints relating to bail conditions. However, the Ministry of Community Safety and Correctional Services played an important role in one of the more controversial aspects of the G20 security plan – at the request of the Chief of the Toronto Police Service, it sponsored the adoption of a regulation relating to the erection of an impenetrable security fence around a broad swath of downtown Toronto. The Ministry's conduct leading up to the issuance of Regulation 233/10, and in communicating its significance to stakeholders, comes squarely within the Ombudsman's investigative mandate. Accordingly, our investigation focused on these issues.

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[7] Canadian Civil Liberties Association, "Protecting Civil Liberties and Human Rights at the G-20: CCLA Statement of Concerns", 21 May 2010 at 3 [*CCLA Statement of Concerns*].

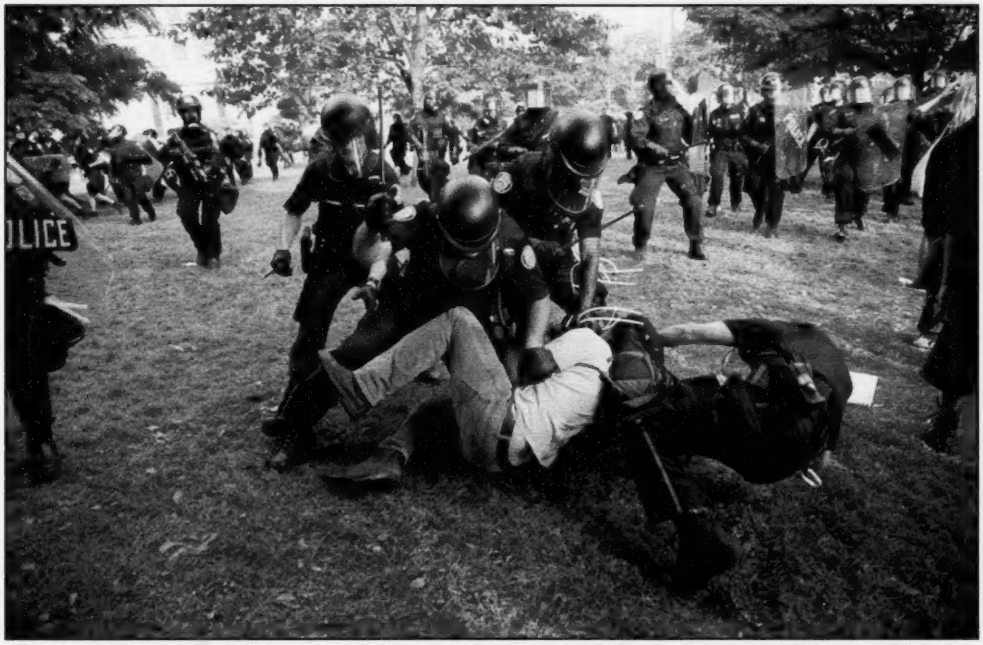

Figure 25: June 26 - Police arrest demonstrator at Queen's Park. (Photo by Vincenzo D'alto)

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[8] MUSH refers to the broader public sector, including municipalities, universities, schools, hospitals, as well as the police and children's aid societies.

Investigative Process

72 The investigation of this matter was assigned to a Special Ombudsman Response Team (SORT), and was conducted by 7 investigators and 2 early resolution officers. The team carried out 49 interviews with senior Ministry staff, City of Toronto officials, senior OPP officers (including the former Assistant Commissioner of the RCMP who was the lead on the Integrated Security Unit steering committee), complainants and stakeholder groups. SORT staff received excellent co-operation from both the Ministry and the Ontario Provincial Police. Most interviews were tape-recorded and transcribed.

73 We also extended invitations to the Toronto Police Service and York Regional Police to speak with us and share their experiences and comments in relation to the issues that we were investigating. We asked to speak with specific police officers who appeared to have been involved in incidents where the *Public Works Protection Act* had been applied. The Toronto Police Service declined this invitation. The York Regional Police provided us with a written response dated October 12, 2010.

74 The team also reviewed more than 1,000 pages of documentation provided by the Ministry. Under the *Ombudsman Act*, the Ministry was entitled to claim solicitor-client privilege with respect to documents relating to legal advice. A number of documents we received were heavily redacted on this ground. However, in some cases we found information withheld as being "irrelevant" or "non-responsive." In other cases, we received multiple copies of the same document redacted to different degrees. At our request, the Ministry reviewed a number of documents to respond to our concerns around disclosure. Further information was released as a result.

75 SORT also conducted extensive independent research, including looking at what had occurred at previous summit meetings. As well, investigators employed old-fashioned evidence-gathering techniques such as visiting the "zone" and informally interviewing business people, employees and residents who had been within the boundary of the fence.

Strategic Use of Social Media

76 In addition to traditional investigative techniques, this investigation represented a significant departure for our Office in the collection of evidence. It provided a unique opportunity to employ various social media, such as Facebook, YouTube, websites, podcasts, blogs, and microblogging services such as Twitter. This proved to be a tremendously successful approach.

77 A vast array of images bombarded television screens and social media sites during the G20 summit and in the ensuing days, many of them gathered and circulated by people who were directly involved in and/or witnessed the events firsthand. We identified more than 5,000 videos relating to the G20 that were posted to social networking websites, and these proved to be a useful and innovative investigative tool. Social media enabled SORT investigators to tap into a wide audience, and gain access to real-time evidence at the stroke of a key. We also received numerous videos and some 500 photographs directly from members of the public.

Figure 26: June 25 - Reporters and civilians photograph demonstrators and police on College St. (Photo by Mark Kari)

78 At the outset of the investigation, I used Twitter to invite people to contact our Office with information relating to the issues under investigation. This novel form of outreach raised awareness beyond our traditional audiences. SORT assigned two investigators to work in close conjunction with our Communications team to monitor G20 social media traffic and review the content of social networking sites. These sites also proved to be an effective way to reach people of potential interest to our investigation; most of the people we contacted through social networking sites responded.

79 Like Twitter, Facebook was a useful resource for us during this investigation. The announcement of our investigation was posted on the Office's Facebook page, along with an invitation for the public to share their experiences and videos. We received a large number of responses and comments as well as expressions of support for the investigation. We received video links from the public through this medium as well.

80 Our website has received thousands of additional visits as a result of the announcement of the investigation. There was a significant spike in our website traffic, with almost 2,000 visits to our site on the day of the announcement and 37,270 page views in the month of July alone.

81 From the outset of our investigation, efforts were made to ensure the preservation of electronic evidence. In order to avoid losing access to Internet evidence that might be updated or removed, software was installed to ensure Internet videos were saved. Investigators spent many hours reviewing G20-related videos downloaded from YouTube, assessing their relevance to the issues under investigation. Some videos showed people being asked for their identification and being searched by police in areas far from the security perimeter. Some included specific references made by authorities to the *Public Works Protection Act*. For example, Charlie Veitch of the "Love Police" from England is shown on camera being arrested outside of the security fence on June 24 for failing to comply with an officer's request to identify himself. The video includes an image of his Undertaking to Appear charge sheet, stating he was charged under the *Public Works Protection Act s.5(1)*.

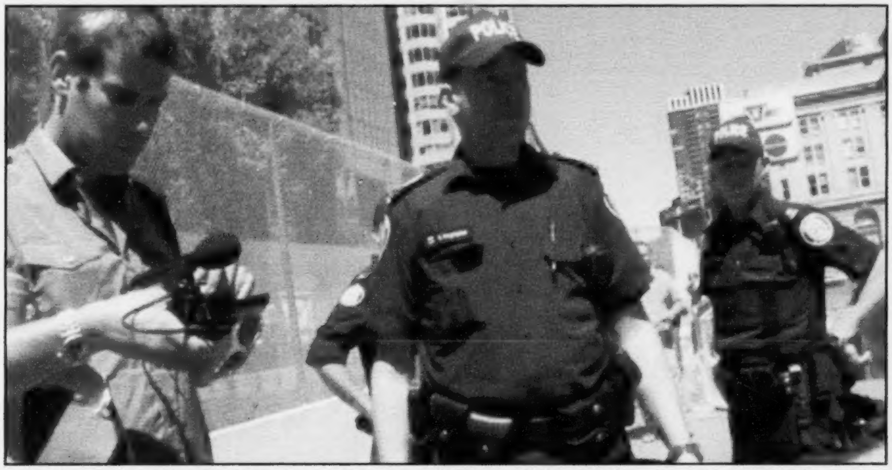

Figure 27: June 24 - Charlie Vietch of The Love Police talking with police shortly before his arrest. (Photo still taken from Youtube video – see Appendix A, No. 1b)

82 Descriptions and links for videos relating to the *Public Works Protection Act*, identification and property search requests, witness accounts, arrests, media reports and other images relating to the G20 summit are contained in Appendix A to this report.

83 While many videos provided valuable evidence of events as they occurred, there were limitations in working with this medium. People shown in the videos were not always identifiable, nor were the locations always discernible. While the images provided insight into the events occurring around the G20, video evidence was not a substitute nor did it replace the need for a thorough field investigation. Nevertheless, social media have transformed the way we conduct investigations, and communicate with the public. We anticipate using social media as both an outreach and an investigative tool in future SORT investigations.

Extraordinary Times Call for Extraordinary Measures

84 During our investigation, we learned that while it is not the province's oldest statute, the *Public Works Protection Act* is certainly not new. It has been in place for more than 70 years. At the time of its creation, parliamentarians were not concerned with security for international dignitaries attending global summits. They were implementing martial law in the wake of Canada's entry into World War II.

85 On September 10, 1939, Canada declared war against the German Reich. Nine days later, Ontario's Legislative Assembly convened an emergency session to consider a series of war measures. The *Public Works Protection Act, 1939* was one of the statutes the Assembly passed during that session to enable government "to proceed immediately with those activities incidental to War, which come within Provincial jurisdiction."

86 This was an exceptional time, which called for exceptional action. As the session concluded, the Lieutenant Governor observed:

> We are now engaged in a life-and-death struggle with a boastful, arrogant enemy who would ruthlessly crush out all personal, civil, and religious freedom. No one who has followed events of the past few years can doubt that. He must be decisively defeated if we are to preserve all those things we hold most dear.

87 During wartime, a certain degree of intrusion on civil liberties is expected and no doubt necessary to preserve order and ensure public safety. With this in mind, it is not that surprising that the *Public Works Protection Act, 1939*, conferred very broad powers to secure a large array of public property, including public transportation, utilities, and government buildings.

88 The Act authorized various public officials, and even private entities in some cases, to appoint guards to protect public works, which were defined by the Act as including:

> (a) any railway, canal, highway, bridge, power works including all property used for the generation, transformation, transmission, distribution or supply of hydraulic or electrical power, gas works, water works, public utility or other work, owned, operated or carried on by the Government of Ontario or by any board or commission thereof, or by any municipal corporation, public utility commission or by private enterprises,
>
> (b) any provincial and any municipal public building, and
>
> (c) any other building, place or work designated a public work by the Lieutenant-Governor in Council.(s. 1)

89 In the case of highways, the term was further defined to include common or public highways, as well as any streets, bridges and any other "structures thereon." [9]

90 Under the Act, guards and other peace officers were entitled to require any persons entering or attempting to enter any public work or any approach to a public work to furnish their name and address, identify themselves, and state the purpose they desired to enter the public work in writing or otherwise.[10]

91 They were also authorized to search without warrant anyone entering or attempting to enter a public work, as well as vehicles they were suspected to have had charge of or control over or had been a passenger in.[11] In addition, guards and peace officers were given the power to refuse entry to a public work and to use necessary force in doing so.[12]

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[9] This definition was initially incorporated through reference to the definition of "highway" in *The Highway Improvement Act*, R.S.O. 1927, c.54, and was later amended and set out expressly in section 1 of the *Public Works Protection Act*.

[10] This section now appears with minor amendments as subsection 3(a) of the *Public Works Protection Act, R.S.O. 1990, c. P.55 [Public Works Protection Act]*.

[11] This section now appears with minor amendments as subsection 3(b) of the *Public Works Protection Act*.

92 Failure to comply with a request or direction of a guard or peace officer or being found upon a public work or on an approach to a public work without lawful authority was an offence under the Act that could lead to arrest, and a fine of $100 and/or imprisonment for two months.[13] In proceedings under the Act, the statement under oath of an officer or employee of the body operating or having control of a public work regarding its boundaries was also deemed to be conclusive evidence against an accused.[14]

93 The Act did not define what was meant by the term "approach to a public work," but it contemplated that regulations could be issued "defining the areas which constitute approaches to public works, either generally or with regard to any particular public work."[15] Regulations could also be made under the Act to deal with oversight of guards, and respecting "any matter necessary or advisable to carry out effectively the intent and purpose of the Act."[16]

94 While there is very little recorded concerning the legislative intent behind the Act, clearly its primary purpose was to ensure that Ontario's infrastructure was safe from the threat of sabotage. It might also be presumed that the expansive definition of "public work," which enabled guards and peace officers to require anyone entering or on any highway or street to provide identification, and submit to search, was also generally directed at uncovering weapons and rooting out enemies of the state.

The War Ends, but Martial Law Lingers

95 When the war ended in 1945, and the nation returned to a peaceful existence, the *Public Works Protection Act* lingered – a remnant of a world in conflict. With the exception of some relatively minor amendments, including in 1990 when the fine that could be levied was increased to $500, the Act has remained largely intact.[17]

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[12] This section now appears with minor amendments as subsection 3(c) of the *Public Works Protection Act*.
[13] This section now appears with minor amendments as section 5 of the *Public Works Protection Act*.
[14] This section now appears with minor amendments as section 4 of the *Public Works Protection Act*.
[15] This section now appears with minor amendments as subsection 6(b) of the *Public Works Protection Act*.
[16] These sections now appear with minor amendments as subsections 6(a) and (c) of the *Public Works Protection Act*.
[17] A copy of the *Public Works Protection Act* as it appears today is attached as Appendix B to this report.

96 Yet it has been rarely used. Since 1939, the government has used the *Public Works Protection Act* to appoint guards to secure a variety of government buildings, including Queen's Park. Another area where the Act has been employed, together with specific provisions in the *Police Services Act*, is to support enhanced courthouse security. Increased security measures were put in place in the province following a series of violent incidents and threats against justice system participants, including fatal shootings, occurring in Ontario courthouses, and the authority to do so was said to be found in part in the *Public Works Protection Act.*[18]

97 Ontario's *Public Works Protection Act* is unique in Canada in terms of the breadth of its reach and the powers it confers. While some jurisdictions have adopted statutes to specifically address the security of courthouses, no other Canadian statute defining "public works" contains provisions similar to those found in Ontario's Act.[19]

98 While some law enforcement officials were doubtless familiar with this extraordinary legislation, it was certainly not on the public radar prior to the 2010 G20 summit. If not for the events unfolding around the summit, it is quite likely that most Ontarians would have gone about their lives without ever knowing of the Act's existence.

Preparing to Scale the Summit

99 In the months leading up to the G20 summit, lawyers and advocacy groups counseled demonstrators, distributed pamphlets, held workshops, and maintained websites providing advice on civil rights. Demonstration organizers also conferred with ISU and Toronto Police Service officials, seeking approval for protest routes and information on security measures that would affect the rights and freedoms of tens of thousands of people readying for protest.

100 On May 21, 2010, the Canadian Civil Liberties Association (CCLA) issued a paper entitled "Protecting civil liberties and human rights at the G-20: statement of concerns." In this paper, the CCLA observed that the proposal to cordon off large areas of Toronto for security reasons would engage a number of *Charter* rights, specifically, section 7 which guarantees individual liberty, including freedom of movement, and sections 2(b), (c) and (d), which guarantee freedom of expression, freedom of peaceful assembly and freedom of association.

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[18] *R. v. Campanella*, [2005] O.J. No. 1345 (Ont. C.A.) (QL) [*R. v. Campanella*].

[19] Alberta, Manitoba, New Brunswick, Newfoundland and Labrador, Prince Edward Island, Quebec, and Saskatchewan all have legislation defining "public works" for certain purposes. At the federal level, the *Public Works Nuisances Regulations* C.R.C. c.1365, made under the *Department of Public Works and Government Services Act, S.C. 1996, c.16,* regulate conduct in relation to defined public works.

101 While the CCLA acknowledged that security perimeters could be established to protect foreign dignitaries, it was concerned about their scope. It was aware that under the federal *Foreign Missions and International Organizations Act* the RCMP had broad authority to "take appropriate measures, including controlling, limiting or prohibiting access to any area to the extent and in a manner that is reasonable in the circumstances."[20]

102 It also noted that the APEC Interim Commission report[21] had endorsed a guiding principle that a "security perimeter [may] be enlarged for non-security reasons to the extent necessary to ensure that the participants are able to conduct their business effectively…." However, the CCLA cautioned that the APEC report had also warned that a fence line designed to significantly distance protesters and maintain a "retreat-like atmosphere" could well violate the *Charter*.

103 The CCLA asserted that any extension of the security perimeter beyond what was needed to ensure the safe and effective conduct of the summit would "unjustifiably infringe individuals' freedom of movement, expression, peaceful assembly and association." The CCLA was particularly concerned about the prospect of "ad hoc" searches without reasonable and objective security grounds. It stated in its paper:

> … under no circumstances should individuals be denied entry to a public area simply because they refuse to be searched, or the government believes they will engage in non-violent protest and dissent. To the extent that there is evidence of specific individuals posing serious threats to the safety of persons and property, CCLA accepts that some form of non-intrusive screening could take place. However, it is imperative that the criteria for exclusion be publicized in advance.

104 On June 4, the CCLA wrote to both the RCMP and the Toronto Police Service to request further information about the external security fences that had been announced the week before. The CCLA posed a series of questions relating to what the public could expect in relation to identification and search powers during the summit, including the question:

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[20] *Foreign Missions and International Organizations Act*, S.C. 1991, c. 41, s. 10.1(2).

[21] Canada, Commission for Public Complaints Against the RCMP, *APEC – Commission Interim Report* (21 July 2001) at 3 (Commissioner: Ted Hughes, Q.C.) [*APEC – Commission Interim Report*].

Will individuals be given the option of leaving without being searched if they refuse consent?

105 On June 13, the Toronto Police Chief responded to the CCLA's inquiries with general information about the legal authorities that would be used to ensure the security of those participating in the summit, including the *Police Services Act*, the *Foreign Missions and International Organizations Act* and the common law. As for searches at the security perimeter, he said they would be based on the discretion of the officer and the circumstances presented, and that anyone requesting access into the security perimeter might be subject to search. He explained that the searches would be done for security purposes to assist police in providing a safe environment for the summit. There was no mention of the *Public Works Protection Act*. Nor was the Act ever mentioned in any of the numerous meetings that the CCLA held with Toronto Police Service officials as it prepared for the summit.

106 While the ISU's G8-G20 website referred to the *Criminal Code of Canada*, Ontario's *Highway Traffic Act*, and the common law as authorities limiting *Charter* rights and freedoms in a section on "Information for Demonstrators," it made no reference to the *Public Works Protection Act*. The Toronto Police Service website as well as the City of Toronto website also contained no information about this Act.

107 Advocacy groups were vigilant in seeking to minimize interference with *Charter* rights during the summit and to prepare demonstrators with necessary information for their protection while exercising their right to protest. When they learned that the police had purchased and planned to use long-range acoustic devices, for instance, they took steps to mount a court challenge to mitigate risks associated with these devices. However, these organizations had no knowledge that the Toronto Police Service had another tool in its arsenal – the little-known, little-used *Public Works Protection Act*. If they had known about the Act, they would likely have taken similar measures to challenge its propriety.

108 In the months, weeks and days leading up to the G20 summit, unsuspecting civil rights and advocacy groups advised protesters that unless they were under arrest, they **did not** have to answer any questions or identify themselves to police while participating in demonstrations and they **did not** have to allow police to search their belongings. While this information was consistent with the widely held understanding of the scope of *Charter* protections, it did not take into account the extraordinary powers set out in the *Public Works Protection Act*.

109 It was as if the exceptional nature of the Act had lain dormant for decades, until someone who thought its potential could be mobilized for G20 summit security decided to dust off this war relic, and get creative.

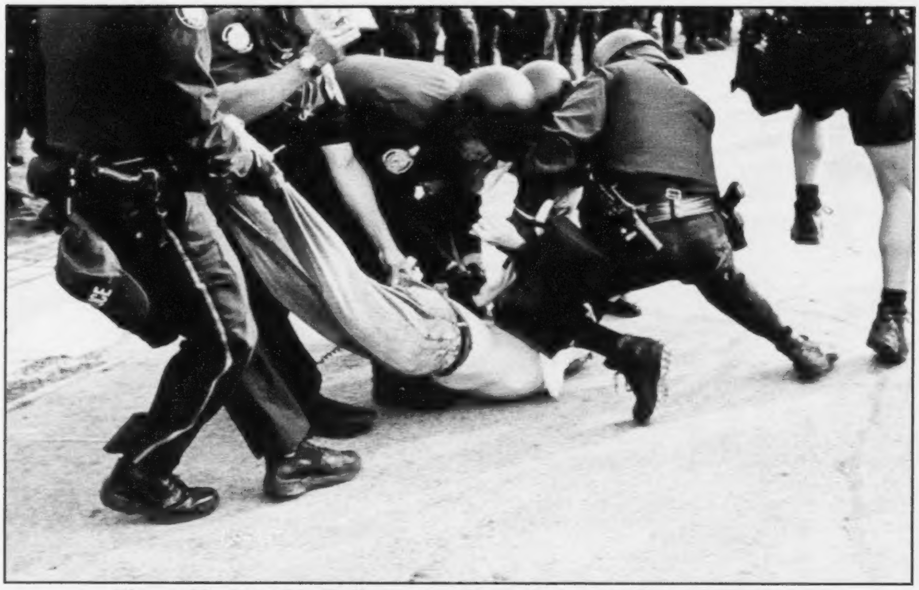

Figure 28: June 26 - Police arrest demonstrator at Queen's Park.
(Photo by Carl William Heindl; eroder.com)

110 Because much of the discussion of the Act prior to the issuance of Regulation 233/10 involved lawyers and is properly protected by solicitor-client privilege, our understanding of what transpired is incomplete. What we were able to determine was that in the early spring of 2010, security planners and legal counsel began to discuss the legal framework for erection of the perimeter fence for the G20 summit.

Good Fences Make Good Neighbours

111 While the *Police Services Act* and related statutes such as the *Criminal Code of Canada* say nothing about the power to erect and administer security perimeters, the common law compliments these statutes by providing officers with the authority to use "justifiable powers" in discharging their general policing obligations, including their duties to preserve peace and prevent crimes.[22]

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[22] see *Police Services Act*, R.S.O. 1990, c.P.15, s. 42.

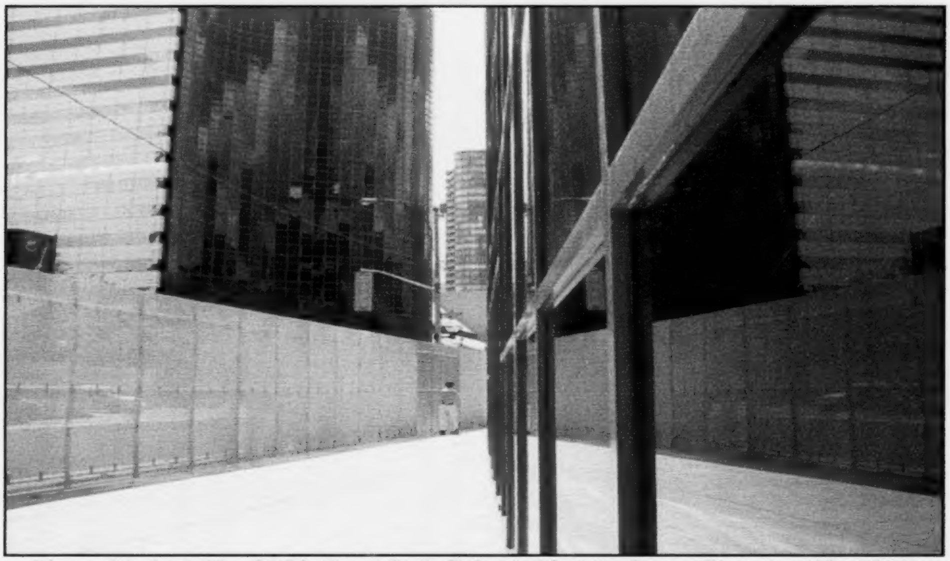

Figure 29: June 28 – CBC's Front St. building behind the fence. (Photo by Alfred Ng)

112 In the case of security for international leaders, there is authority directly on point in the pre-*Charter* decision in *R. v. Knowlton.*[23] *Knowlton* involved the establishment and administration of a security perimeter. The police had cordoned off an area, including part of a public street, for security purposes related to the impending visit by the premier of the U.S.S.R. Mr. Knowlton wanted to enter the area to take pictures and he told the officers so. He was warned that he could not enter and that if he tried he would be arrested. Mr. Knowlton questioned the authority of the officers to prevent his entry onto public property. The police refused to explain their lawful authority. Mr. Knowlton therefore ignored the warning, entered, and was arrested and charged with obstructing a peace officer in the course of his duties. He sought to defend that charge by arguing that the police had no power to prevent his entry and therefore were not acting in the execution of their duty when he disobeyed them.

113 The Supreme Court of Canada recognized that the police had a general policing duty to protect the premier and were acting in the course of that duty at all times. The question was whether it was justifiable for them to establish the perimeter in discharging that duty. The Supreme Court of Canada held that it was:

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[23] *R. v. Knowlton,* [1974] R.C.S. 443 (S.C.C.).

> It is notorious and of common knowledge that the official visit of the head of state or high rank dignitary of a foreign country, friendly as either may be, is an event that frequently engenders a real or apprehended threat to the preservation of peace and that calls, therefore, for the adoption of proper and reasonable security measures in and by the host country.[24]

114 The court noted that it was well known to Canadian officials that the Russian premier had been assaulted when in Ottawa and stated that "these official authorities were not only entitled but duty bound, as peace officers, to prevent a renewal of a like criminal assault" and that they had "a specific and binding obligation to take proper and reasonable steps" including restricting the right of free access of the public to public streets. The court concluded that the police conduct in restricting public access clearly fell within the general scope of the duties imposed upon them and that the use of police powers was not unjustifiable in the circumstances.

115 In accordance with international law, Canada is also obligated to protect foreign dignitaries on Canadian soil.[25] Consistent with this requirement, the federal *Foreign Missions and International Organizations Act* states that the RCMP has primary responsibility for the security of intergovernmental conferences and provides the RCMP with relatively broad authority to carry out this security objective.[26]

116 However, as the CCLA noted in its pre-summit paper, any measures taken by local police or the RCMP in erecting security barriers must be reasonable in reach and design to be justifiable.

117 We were advised by former ISU members that while they were discussing use of the *Foreign Missions and International Organizations Act* to establish security perimeters for the G8 and G20 summits, lawyers at the Ministry and their federal counterparts were having difficulty reaching agreement on the proper interpretation of that Act. The federal Act does not confer authority on the municipal and provincial police officers who work alongside the RCMP in administering a security perimeter. This is because a federal statute cannot grant police powers on provincial peace officers. However, this limitation appears to have been the source of some debate amongst counsel. Under the *Foreign Missions and International Organizations Act*, the federal government may enter into security arrangements with any province in connection with international meetings taking place in Canada.[27] An internal Ministry business case notes that the "local police forces" had requested that the province seek an agreement under the Act. The Toronto Police Service and the provincial Ministry appear to have believed that if an agreement could be reached, this would enhance security for the summits and further legitimate the erection of the perimeter security fence. Federal lawyers apparently disagreed with the suggestion that the Act could be applied in this manner, and expressed concern about the precedent that this would set.

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[24] Ibid. at 447.

[25] These obligations arise under international instruments such as the *Vienna Convention on Consular Relations*, 24 April 1963, 596 U.N.T.S. 261 (entered into force 19 March 1967), online: United Nations Treaty Collection http://untreaty.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf, and the *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, Including Diplomatic Agents*, 14 December 1973, 1035 U.N.T.S. 167 (entered into force 20 February 1977), online: United Nations Treaty Collection http://untreaty.un.org/ilc/texts/instruments/english/conventions/9_4_1973.pdf.

[26] *Supra* note 20, subsection 10.1(1).

118 On May 7, 2010, Ontario's Deputy Minister of Community Safety wrote to Public Safety Canada about entering into a security agreement. City of Toronto lawyers, acting as counsel for the Toronto Police Service, also apparently attempted to have the service mentioned in an order-in-council under the legislation relating specifically to G20 security. However, the federal government declined both of these requests. In denying the Deputy Minister's request, federal officials noted that an arrangement would not increase the power of provincial or municipal officers. It was also explained that arrangements under the federal Act are intended solely to facilitate consultation and co-operation between police forces for integrated projects, and noted that consultation and co-operation had already been achieved without the kind of formal arrangement contemplated by the statute.

119 It appears that the federal government's reluctance to enter into an agreement under the *Foreign Missions and International Organizations Act* provided increased incentive for officials to look to the *Public Works Protection Act*. Under the federal Act, the RCMP appeared to have clear authority to construct and control the interior security barrier for the "red zone," but the Toronto Police Service believed that unless it was somehow delegated power under that legislation, it would have to look elsewhere for incontrovertible legal support to construct and control the exterior security fence.

120 During our investigation, one Ministry official expressed the view that reliance on the *Public Works Protection Act* would have been unnecessary had the federal government entered into an agreement with the province under the federal Act. Based on OPP documentation, it appears that by late March the provincial Act was seriously being discussed as an alternative.

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[27] *Supra* note 20, subsection 10.1(4).

121 Internal OPP email communications, dated March 28, 2010, relating to "G8/G20 - *Public Works Protection Act*," indicate that the OPP was not particularly interested in exercising authority under this arcane legislation in connection with the G8 summit. An OPP superintendent wrote to his Chief Superintendent that day, commenting:

> I am familiar with the Act. It is a wartime piece of legislation that was revised and updated during the NDP era. We have looked at it extensively in the context of Public Order. We have always believed we would save it for a critical time as it would not likely stand up to a constitutional challenge the first time it is used. Having said that, I do not believe we require any implementation for G8. With the Foreign Missions Act and other current legislation there is nothing required for G8 at this time.

122 Consistent with this view, when the OPP were asked by Ministry counsel whether they wished to pursue a designation under the *Public Works Protection Act* for G8 security, they politely declined.

123 Ministry records indicate that it was known well before the Toronto Police Chief's letter was received on May 12, 2010, that the Toronto Police Service was looking for a designation under the *Public Works Protection Act*. Internal Ministry documents suggest that the approval process relating to this designation was already being planned for by April 9.

Securing the Perimeter

124 In his May 12 letter to the Ministry requesting a designation under the *Public Works Protection Act*, the Toronto Police Chief noted that various legal authorities would be used by the Toronto Police Service and the Integrated Security Unit to support the establishment and control of the security perimeter for the G20 summit, including the common law, and "provided certain conditions are met, the federal *Foreign Missions and International Operations Act*." (It would appear that the Toronto Police Service was still holding out hope at that point that some form of agreement could be obtained under the federal Act.)

125 The Chief went on to say:

> … we believe that the provisions of the Ontario *Public Works Protection Act* (PWPA) would also offer legal support for the extraordinary security measures being undertaken for this unusual event. Section 3 of the PWPA

> explicitly confers powers on police officers in respect to controlling access to "public works" that would be extremely helpful in reinforcing the existing legal authority for police officers to control the security perimeter. Those powers include requiring persons entering the public work to identify themselves and state their purpose for entering and authority to search people and vehicles attempting to enter.

126 The Chief observed that the Act authorizes the Lieutenant Governor in Council to designate any "building, place or work" as a public work for the purposes of the statute and requested that this section be used to designate the area of or highways within the intended security perimeter (as set out in an appendix to the Chief's letter) as a public work for the period from June 21 through the end of the summit on June 27. He noted:

> This would provide valuable additional support for the Integrated Security Unit and the Toronto Police Service's efforts to ensure a firm legal basis for the exercise of the powers necessary to protect summit attendees and to provide the high level of security required for this event.

127 The Chief went on to explain that although the control of access to the secured zone was intended to be limited to the two days of the G20 summit, the designation for the longer period was designed to "ensure that there is a firm legal basis for controlling access to the perimeter, if increased security concerns require a longer period of restricted access."

128 We do not have full insight into the reasoning of the Toronto Police Service in attempting to secure the designation under the Act. However, in an internal OPP email exchange of May 17, there is an interesting reference to the motivation behind obtaining the designation. In the email, an OPP Deputy Commissioner advises his Superintendent:

> The way their email is worded is that it will help with the authority to keep people out of the CAZ [controlled access zone] and interdiction zone. I thought they were only looking at it to put off any strike action.

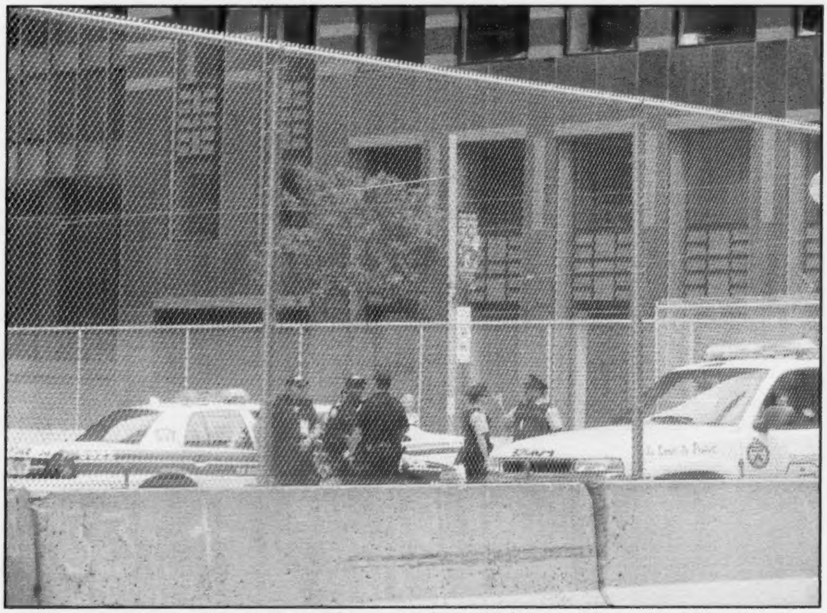

Figure 30: June 23 - Police officers behind the fence. (Photo by Alfred Ng)

129 At the time, workers at a number of hotels in the city were threatening strike action. In fact, at the Novotel, host to a number of G20 attendees, pickets went up on the Thursday before the summit until it got underway.

130 On May 20, several Ministry officials met to brief the Minister concerning the Chief's request. Two senior OPP officials also participated by way of teleconference. Ministry counsel took the lead at the briefing, and all the versions that our Office received of the slide deck used for the presentation have been redacted to varying degrees to remove "privileged" information. However, the following "communications considerations" are set out in the briefing material:

> … The ministry has been largely silent on G8/G20 and has deferred to ISU on security matters.
>
> A designation under the PWPA could bring the Ministry, and more specifically the Minister to the fore in the public conversation on summits security.
>
> The Minister could be criticized for invoking a piece of legislation – designed to protect the province in time of war – as a means to increase police powers during the G20 summit.

> Should there be criticism of police actions in the G20, the Minister would be vulnerable to criticism that the use of the PWPA contributed to the action.
>
> Invoking the Act could lead to the perception that police do not currently have the power to stop and search people coming into the interdiction zone.
>
> If the use of the PWPA is perceived to be successful from a policing point of view, police services could begin asking the ministry to take similar steps for future events, which could lead to the perception that the Ministry is becoming more closely involved in public order police operations.
>
> RECOMMENDATION: If the decision is made to designate under the PWPA, the communications strategy should be wholly reactive. Strong messaging would need to be developed and the support of all ISU partners and the federal government should be secured.

131 The briefing document also indicates that a designation would be a change from the Ministry's current position of general non-involvement in the G20 and that there were no known previous instances of a designation of a public work occurring under the Act. It also notes:

> …It is possible that authority for these steps already exists under the common law or the FMIOA. The presence or absence of a designation is unlikely to have any affect on operational planning for the G20.

132 A number of options were also set out for the Minister. It was understood that the Chief's preferred option involved designating the entire interdiction zone as a public work, including private residences and offices. It was noted that such a broad designation might attract significant criticism. Another option would result in only the highways within the interdiction zone being designated as public works. A third option would see everything in the interdiction zone that was already a public work under the Act – including highways, sidewalks, bridges and railways, as well as a limited number of locations on the perimeter of the zone, which were not public works – designated for the purposes of the Act. This option was seen as satisfying the Chief's request as well as being less likely to attract criticism. A fourth option was to deny the designation outright. The one "con" listed to this approach, which was not redacted from the materials we received, was that it "would be perceived as not supporting TPS [Toronto Police Service]."

133 The next steps outlined in the presentation included scheduling the regulation for consideration by the Cabinet's Legislation and Regulations Committee by May 31, having the Minister sign off on the regulation and committee materials, and publishing the regulation on the government e-Laws site – which, it was noted, could occur "shortly before the TPS erects the fence."

134 We interviewed a number of individuals who attended the May 20 briefing and took part in earlier discussions relating to the Chief's request. The former Commissioner of Community Safety (currently the Deputy Minister[28]), who was in charge of continuity of government operations during the G20 summit, explained that during its internal discussions, the Ministry had considered the justification and necessity for the designation as well as the impacts on the civilian population. He observed that the G20 was seen as an "unprecedented security event from a police perspective, from a political perspective and from an international perspective." The world leaders who would be attending had all received "legitimate threats to their safety." Canada was at war with a country with terrorist affiliations, and an Ottawa bank had recently been fire-bombed, followed by threats of further violence. In addition, Toronto had considerable infrastructure, was the centre of the Canadian banking industry, was adjacent to a nuclear facility, and had the largest population in Canada. While the Commissioner emphasized the exceptional nature of the G20 summit and the need to ensure the safety of the dignitaries as well as the public, he also stressed that the designation of "public works" was viewed as more of a "backstop" to reinforce the powers already contained in the *Public Works Protection Act* and existing under the common law.

135 An OPP superintendent who also represented the OPP on the ISU took part in the Minister's briefing. He advised us that he had promoted the need for training for frontline officers on the *Public Works Protection Act*. He observed that the Act was "an old piece of provincial legislation," and that "unless you were in a specialized area of policing," officers would not be familiar with it, and in fact, "very, very few people would know that this legislation even exists." An internal Ministry email commenting on the briefing later that day confirmed that the Minister "liked" the OPP Superintendent's suggestion of Toronto officers receiving training on the Act to ensure that "they act appropriately." The Commissioner of Community Safety informed us that at some point during the discussion of the regulation, he had spoken to the Chief about the need for officers to be familiar with the legislation. He advised that he received assurances from the Chief in this regard. He also obtained confirmation that the regulation would only be applied by police officers, and that the Chief had no intention of appointing civilian "guards" under the Act (the potential to appoint civilians to exercise the extraordinary powers under the Act was apparently a point of concern for some Ministry officials).

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[28] For ease of reference in this report, this official will be referred to as the Commissioner of Community Safety.

136 By May 21, the Minister had signed off on the third option presented at the briefing, designating all those public works and a few other areas within the security perimeter, as public works. This was viewed as a compromise on the Chief's request. By then, the Premier's office had also been consulted and provided conditional approval. A Ministry email recounting this discussion notes:

> …[the Premier's office] are fine with this moving forward, but wanted assurances that if there was a public outcry or if something went south on this, that [the Chief] would be able to publicly say that he requested this as he felt the TPS needed this designation.

137 According to a Ministry email, the Chief had provided assurance to the Commissioner of Community Safety that he was "prepared to publicly say that the TPS needed the PWPA designation."

138 The regulation went to Cabinet's Legislation and Regulation Committee on May 31 as initially planned. The Ministry approval form prepared for the committee noted that the public interest in the regulation was "moderate" and the key stakeholders' interest "very high." In the confidential briefing note prepared for the committee, in a section entitled "Stakeholder Consultations," it was noted that the OPP, RCMP and Public Safety Canada were aware of the Toronto Police Service request for the regulation. Under "contentious issues," the concerns highlighted at the time of the Minister's briefing were set out. The "mitigation strategy" proposed was for the Ministry to be "low-key and reactive" and to "ensure support of all ISU partners and the federal government (Public Safety Canada)."

139 We received various redacted versions of speaking notes prepared for the Minister in anticipation of his attendance at the committee. The most comprehensive version of the notes emphasizes the need to ensure the safety of the G20 summit. They refer to the *Public Works Protection Act* as having been around since World War II, and to the fact that it "has never been invoked because we have not seen the need to do so in the past." The purpose of the regulation is generally described as "simply to ensure police have clear and unquestioned authority to take whatever steps are necessary to ensure a successful summit." Regarding the regulation's impact on citizens, it is noted:

> We are not taking drastic measures to curtail individuals' rights or to give police unlimited powers to arrest and detain people. We are simply indicating to the public that there are good reasons for enforcing the interdiction zone restrictions and that we support the Toronto Police Service – and other members of the ISU – in their efforts to ensure the success of the G20 summit.

140 In another version of the notes, it is emphasized that the regulation would not change the security measures that the Toronto Police Service intended to take.

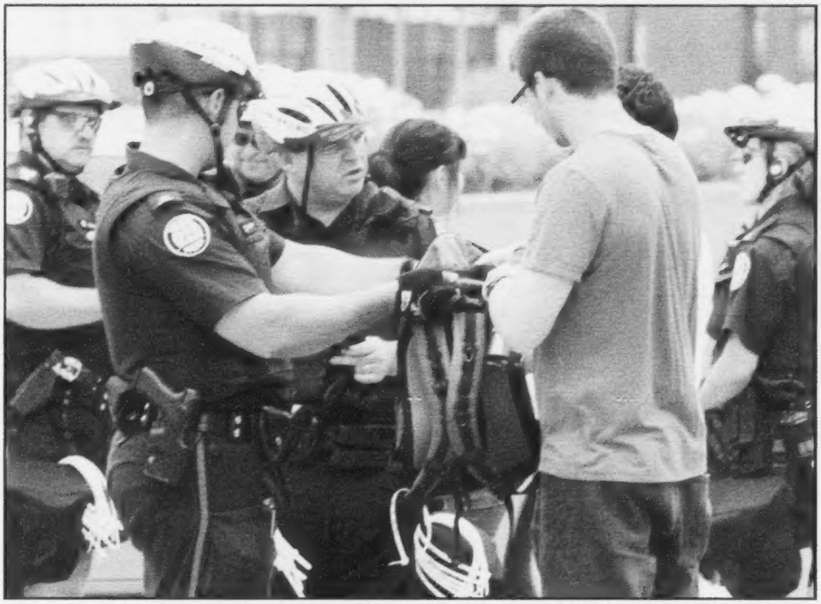

Figure 31: June 27 - Police search man near University Ave. and College St. (Photo by David King)

141 On June 2, the regulation was discussed and voted on at a special five-member meeting of Cabinet. The following day, the Lieutenant Governor formally signed off on it.

142 The Minister did not **officially** inform the Toronto Police Chief that the regulation had been issued until he wrote to him on June 15, saying:

> I agree that there are various sources of legal authority to support the security perimeter. I also recognize the desirability of having additional sources of legal authority to ensure clarity regarding the ability of the Toronto Police Services to take the steps that it will be taking.

143 While the regulation was intended to provide "clarity," we found that Ministry officials did not share a uniform understanding of what it actually accomplished. Some were under the impression that the regulation designated the entire exterior security fence as the "public work," while others indicated that it was the whole area within the fence, and still others explained that it pertained only to a few specific places in the security perimeter which would not otherwise have been subject to the Act. A copy of the full regulation is found at Appendix C to this report. The regulation appears, at first glance, to present a challenge to anyone without a formal education in land surveying. Even the Commissioner of Community Safety acknowledged that it was an "articulation of lawyers who deemed that these places need to be designated," and as such it was "quite complicated," "confusing," and easiest understood by reading along with a map of the area.

A Public Work By Any Other Name is Still a Public Work

144 The first section of Regulation 233/10 does not actually purport to create any new areas as public works. It essentially designates as public works the infrastructure for transportation, including highways, streets, railways and bridges as well as utility works, which were already public works under s. 1(a) of the *Public Works Protection Act*, and which fell within the geographic area described in Schedule 1 to the regulation (the security perimeter). To the extent that this section merely confirmed that the public works in the interdiction zone were public works, it appears to have been redundant. However, the description then goes on to state "for greater certainty this includes every sidewalk in the area." The definition of a public work in the Act included any part of or structure incidental to a street, but did not specifically refer to sidewalks. While sidewalks would likely be viewed as structures incidental to a street, this section of the regulation appears to have been intended to leave no doubt that this was the case.

145 The second paragraph of the section provided that three places described in Schedule 2 were also public works for the purposes of the Act. Two of these were described as an area "within five metres of a line drawn" from various geographic orientation points. The third description does not contain any reference to "five metres." A copy of a map, received from the Ministry, showing the three "public works designated places" is attached at Appendix D.

146 The regulation provided that it was only to be in effect from June 21 through June 27, 2010. After that point, the three areas specified in section 2 would revert to their normal status. However, anything that was a public work prior to the regulation coming into effect would presumably retain its protected position under the Act after the regulation had expired.

147 A Ministry email dated June 25 – after the controversy concerning the regulation had erupted – provides one of the better descriptions of what public works the regulation was intended to designate. It refers to the public works covered by the regulation as comprising:

> 1. All streets and sidewalks inside the fence, i.e., all streets and sidewalks within the "interdiction zone."
>
> 2. A five-metre strip inside the fence where the fence runs along two places that are not streets or sidewalks, specifically, land near a Rogers Centre parking lot and the land behind a building near the Rogers Centre.
>
> 3. The "moat" between union station and Front Street.
>
> 4. In terms of 1 above, the fence runs along the centre of some streets. The portion of the street inside the fence would be designated. The portion outside would not.

148 A number of senior Ministry officials we interviewed said that given the limited scope of the regulation, they did not view it as particularly intrusive or controversial. A senior government official explained that as only three discrete places were added as public works, representing gaps along the security perimeter, he didn't perceive it as significant. He proffered the opinion that had the Chief not misinterpreted the boundaries of the public works covered by the regulation, no one would likely have taken much issue with the regulation itself.

149 As for the identification and search powers that apply to public works, Ministry officials suggested that similar security measures are commonly encountered these days at airports and rock concerts.

150 While the Ministry appears to have considered that the regulation's impact on the public would be minimal, it recognized that the optics of using a war measures statute to assist the Toronto Police Service with G20 summit security were not necessarily ideal. As one Ministry official later said in an internal email on June 28:

> …even with hindsight, we would not have gone out proactively. We would have been the story pre-summit: "Province enacts war measures for TPS in advance of summit."

The Sound of Silence

151 Consistent with the advice to the Minister at the May 20 briefing, the Ministry adopted a reactive communications strategy. This strategy involved not communicating any information about the regulation publicly unless the Ministry was specifically asked about it. In justifying the Ministry's silence around the regulation, we were told by one Ministry official that it never pursues a proactive strategy in the case of regulations, and that Regulation 233/10 simply followed the standard course. However, another Ministry official contradicted this information, telling us that at times it had announced regulations through press releases or public statements. One official was quite candid, noting that keeping things quiet was normal, in the circumstances, since "a mixed reaction" to the regulation was expected.

152 The Commissioner of Community Safety told us the Ministry's reluctance to draw attention to the regulation was consistent with the fact that the province was not directly involved with the G20 summit, which was a federally organized event with the Integrated Security Unit in charge of security. He indicated that it was really up to the ISU to decide whether or not to publicize information about the authority it was operating under. However, from what we can surmise, the Ministry's primary contact both prior to and after the enactment of the regulation was the Toronto Police Service rather than the ISU.[29] While individual OPP, RCMP and Public Safety Canada members may have had some involvement during the Ministry's review of the Chief's request, the time period between the request and the issuance of the regulation was very short, and there is no record of there having been any formal consultation process engaging the ISU or other parties.

153 There was some suggestion following the summit that the ISU had been the driving force behind the request for the public works designation.[30] However, the evidence obtained during our investigation indicates that it was indeed the Toronto Police Service that led this initiative. While some officials involved with the ISU were aware of the Toronto Police Chief's request, it does not appear that the designation request nor the regulation were general knowledge within the Unit. ISU spokespeople did not mention the *Public Works Protection Act* when specifically asked about their authority for the G20 security measures by the media in advance of the summit,[31] and there was no reference to the Act or the regulation on the ISU's website. We found no Ministry records confirming that the ISU had been provided with official notification that the regulation had passed, and email exchanges amongst the ISU Public Affairs Communications Team (PACT) dating from June 24 suggest that they were completely unaware of the Act or the regulation until that day.[32] In fact, on June 29, an ISU PACT official wrote to the Ministry, stating:

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[29] During its review of the regulation, the Ministry did consult with the Ministry of Municipal Affairs and Housing because a municipal police force was involved, and the Ministry of Economic Trade and Development to determine if business would be affected, which might require that the regulation be posted on the Ontario Regulatory Registry.

[30] According to an internal OPP media summary, the Chief referred to the regulation as the ISU's legislation in a CFTO interview on June 30, and a *Toronto Star* article on July 10 reported that the ISU had

> We at PACT didn't know about the regulation until the story broke including the RCMP. TPS kept it very tight and nobody from Ministry told us.

154 On July 1, an OPP official wrote an email confirming that the regulation "was clearly a TPS request." Remarkably, when we spoke with the former RCMP official who had led the ISU steering committee, he said he was "gobsmacked" as he watched the Toronto Police Chief's June 25 press conference from ISU headquarters at Barrie – and heard about the regulation for the first time.

155 Although Regulation 233/10 affected a large segment of downtown Toronto, the Ministry made no attempt to consult city officials about the impact of the public works designation. Ministry records indicate that the Commissioner of Community Safety had asked the Chief whether he had briefed City Hall. However, a May 25 Ministry email confirms that the Chief said he had not consulted Toronto council "due to time limits." During our investigation, city officials maintained that they too only learned of the regulation after it was reported in the news.

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requested that the Chief ask for the designation (Robyn Doolittle, "Chain of command questioned in G20" The Toronto Star (10 July 2010), online: The Toronto Star http://www.thestar.com/news/gta/torontog20summit/article/834287--chain-of-command-questioned-in-g20.)

[31] Adam Radwanski, "A Timeline on the G20 Five-metre rule that didn't exist" *The Globe and Mail* (1 July 2010), online: The Globe and Mail http://www.theglobeandmail.com/news/politics/adam-radwanski/a-timeline-on-the-g20-five-metre-rule-that-didnt-exist/article1626001/.

[32] For instance, around 10 p.m. that evening, one RCMP official on the team asked another member, "Have you figured out what this Act is?"

156 Aside from Ministry and Toronto Police Service officials, it appears that only isolated staff – predominantly lawyers from other organizations involved with G20 planning – knew about the regulation, and that this information had not filtered up to the senior operational level of either the city or the ISU. The Ministry appears to have taken a "hands-off" approach with respect to G20 security organizers, leaving it to the discretion of the Toronto Police Service to notify its ISU partners and others about the regulation.

157 At the Minister's briefing on May 20, it was suggested that the publication of the regulation should be timed to occur shortly before the perimeter fence was erected. One Ministry official told us that the relevant information supporting delaying publication was "privileged" and couldn't be disclosed to us. However, this recommendation to delay publication was likely related to concerns about keeping the location of the perimeter fence confidential for security reasons. In support of this, we found a Ministry email of June 30 confirming that a low-key approach was taken to provide "sufficient time to finalize the exact perimeter … and allow TPS sufficient time to communicate the applicability of regulation to incident commanders and frontline officers."

158 The transcript of an exchange between the Minister's Office and the Deputy Minister's Office on June 7 contains this reference to the Ministry's quiet approach:

> …Following up on [our] conversation we had earlier about the Public Works designation. Yes, we agree, everyone was on board with drawing out the actual release of that knowledge to the public for as long as what is reasonable. So yeah, let's not run out the door right away. Yes, communicating quietly to [the Chief] so he can carry [on] with his planning is fine. So long as we can stress as best we can that this should be kept under wraps until we are ready for it to be known to the public, that would be great…"

Keeping Things Under Wraps

159 Statutes are passed by the Legislative Assembly, and are considered and debated in public view. Generally, when new policing powers are created or existing powers are modified legislatively, it is done through this open process. Subordinate legislation including orders-in-council and regulations is typically considered during confidential Cabinet sessions, and then officially signed off by the Lieutenant Governor.

160 The Ministry had initially considered using an order-in-council to accomplish the public works designation. If it had taken this route, the designation might never have surfaced, since there is no requirement for these instruments to be published. Generally, regulations are confidential until they are filed with the Registrar of Regulations under the *Legislation Act,*[33] at which point they are available for public inspection, provided someone is actually aware of their existence. Once filed, regulations are posted on the government's e-Laws website, and later printed in *The Ontario Gazette*.

161 In the case of Regulation 233/10, although it received formal approval on June 3, it was not filed with the Registrar until June 14. It took two more days for the regulation to be posted to the government e-Laws site. At the last instant of June 16, the public was deemed under the *Legislation Act* to have knowledge of Regulation 233/10 by virtue of its publication on e-Laws. The regulation later appeared in the July 3 edition of *The Ontario Gazette*, but by then it was old news, and had already expired.

162 While Regulation 233/10 was accessible on e-Laws by June 16, in order to find it, a member of the public would have had to have known about the site as well as the existence of the *Public Works Protection Act,* and then searched under the Act for the regulation. Given its technical legal content, it is uncommon for members of the general public to be knowledgeable about e-Laws, and even more rare for them to scan it with any regularity. Even lawyers tend to resort to the site only when they are looking for something specific.

163 While filing and publication of the regulation altered its legal character and provided technical notice to the public, it would have been highly unusual for anyone to have located and read the regulation before June 24, when Dave Vasey's arrest brought it into the public spotlight. Mr. Vasey had certainly never had occasion to review the e-Laws site before his arrest, and would not have known to look for the regulation if he had. As Ministry counsel said in an internal email on June 28:

> …it's important to remember that filing the regulation itself would not have resulted in practical notice to the public at large. Nobody is out there reviewing e-Laws on a daily basis looking for new regulations under the PWPA … once filed, though, it can no longer be considered confidential

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[33] Proposed regulations may be posted on the Ontario Regulatory Registry if they are considered to have the potential of affecting businesses in the province, and it is in the public interest to publicize them before Cabinet has provided its approval. We were advised that the Ministry determined Regulation 233/10 did not come within this category of regulation.

> in law. The effect of filing is not really notice to the public, but rather it officially loses its status as confidential/privileged.

164 The Ministry had been closely monitoring the media and social media sites for information on the summit. There was a notable absence in the days leading up to the summit of any mention of the *Public Works Protection Act* or Regulation 233/10. In fact, on Wednesday, June 23, an article appeared[34] reporting that there was no legislative support for security measures in the "yellow" interdiction zone. This prompted a Ministry counsel to send an email the next day, observing: "This is a heads-up for us to be ready from a communications point of view when the regulation becomes public knowledge." Another Ministry official suggested that the Toronto Police Service might wish to refer to the *Public Works Protection Act* as one of the legislative tools available to it for security. This sparked a frenetic discussion within the Ministry about "touching base with the Toronto Police Service" to find out about their communications strategy. Shortly thereafter, a Ministry official contacted the ISU Public Affairs Communications Team to facilitate a call with the Toronto Police Service concerning the Act. The ISU representative duly contacted the Toronto Police, but in doing so, expressed that he wasn't familiar with the Act that the Ministry was referring to.

165 The Commissioner for Community Safety told our investigators that he had spoken with the Chief on Thursday, June 24, to confirm what communications route the Toronto Police intended to follow. Ministry records suggest that the call took place around 3:50 p.m. At that point it appears that both organizations were still content to maintain a "low-key approach" and refrain from making any public comments about the Act or regulation.

166 At 3:54 p.m., a Ministry official alerted the Minister by email to the fact that the Toronto Police Service had been criticized about its searches, and observed, "I'm not sure this is what we anticipated in granting this to them. It puts us in the limelight." This comment proved prescient – occurring, as it did, simultaneously with Mr. Vasey's arrest.

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[34] Adam Radwanski, "When It Comes to Summit Security, Police Answer to No One" *The Globe and Mail* (23 June 2010), online: The Globe and Mail http://www.theglobeandmail.com/news/world/g8-g20/opinion/when-it-comes-to-summit-security-police-answer-to-no-one/article1613960/ .

Figure 32: June 26 - Demonstrator arrested near the fence. (Photo by Lefteris Pitarakis, AP)

167 After the ISU Public Affairs Communications Team was alerted to the Act's existence, it also conferred with Toronto Police officials about communications strategy. In an email at 4:19 p.m., a member of the team noted:

> I spoke to TPS and the Chief is very… very clear that they will not be speaking to that PWP Act nor will any of our media officers. Thus far no calls so no "pressure."

168 By 5 p.m. that day, the Law Union's Movement Defence Committee had issued an urgent warning on its website, summarizing the Act for protesters. A while later, the Canadian Civil Liberties Association posted similar advice. The Ministry picked up on this Internet communication, and braced for the inevitable media calls. The first inquiry about the regulation was received around 8 p.m. that evening from a reporter based at Queen's Park.

169 A couple of hours later, a member of the ISU's Public Affairs Communications Team predicted that the "issue" of officers using a "specially granted regulation" to "challenge people for ID, etc." would "gather steam," and suggested to the Toronto Police Service that it "would be a good idea to brief officers on the sensitivity" of this "emerging issue."

170 Before the night had ended, media reports were circulating about the *Public Works Protection Act* and the G20 regulation. By Friday morning, the Ministry was receiving inquiries from reporters as well as members of the public about the "sweeping police powers" and the "secret law" operating in the security zone.

Going South at the Summit

171 In the face of media interest in the regulation, the Ministry continued to abide by its reactive strategy, responding to reporters one at a time.

172 While some Ministry documents refer to Regulation 233/10 as giving the Toronto Police Service "additional legal authority" to enforce security in the interdiction zone, the Ministry downplayed the effect of the designation in its communications with the media. The Ministry emphasized to reporters that the regulation was passed in response to an extraordinary request by the Chief, didn't create additional powers for police, but simply defined property, and that the powers only applied to those trying to cross the perimeter and enter the designated zone. The Ministry also clarified that the regulation was not a "secret law," but enacted in the same way as other government regulations.

173 That Friday morning, the Ministry believed that it was on top of the media situation, only to have things shift when the Chief held his press conference at 11 a.m. There, the Chief remarked that "the five-metre zone around the fence is for the protection of the security barrier." This in turn led the media to understand and mistakenly report that the security zone extended five metres out from the perimeter fence.

Figure 33: June 25 - Toronto Police Chief William Blair speaks with reporters. (Photo by Robyn Doolittle, Toronto Star)

174 The Chief's comment caught the Ministry by surprise. The Commissioner of Community Safety told us that the "last thing" the Ministry had wanted was for Regulation 233/10 to be applied "beyond the fence." He said he called the Chief to find out what was going on. By the time they connected, the Chief was already aware of his blunder and assured the Commissioner that he was taking steps to ensure his officers were properly informed about the scope of the *Public Works Protection Act*. The Commissioner told our investigators that he was left with the impression after this call that the Chief would correct the misstatement publicly.

175 By Friday afternoon, some Ministry officials believed it was time to change direction and issue a clarification of the regulation in order to set the record straight. Communications staff drafted a press release, including the following information:

> The G20 is an unprecedented event for Toronto, and has brought unique circumstances and challenges for the Toronto Police Service. In making the regulation, the Ontario government responded to a request from Toronto Police Service to designate the security zone a public work under the Act.
>
> The temporary regulation, which expires on June 28, only applies to individuals wishing to enter the security zone. It does not authorize police officers to require individuals to submit to searches on roads and sidewalks outside the zone.

176 The draft also contained this quote from the Minister:

> This regulation is in place to ensure that the police have clear, legal authority to undertake certain security measures to keep the community safe and maintain public order. Authorization is limited and applies only to those seeking to enter the security zone.

177 The Ministry was careful in drafting the release to avoid drawing attention to the fact that the Act was "a war measures piece of legislation" and to keep it at a "high level." Later that day, Ministry officials began redrafting the press release as a Minister's Statement, and using the information in the statement to field media inquiries. By the end of the day, the Ministry had decided to scrap the idea of going public altogether. As one official explained it to our Office, the Ministry believed that it had contained the situation. It had only received one media call asking specifically about the five-metre rule, the news cycle appeared to have finished, and the Ministry believed it had "fixed" things through its individual media responses.

178 Friday, June 25 was also the same day that the Canadian Civil Liberties Association and other applicants were partially successful through their court application in obtaining restrictions on the Toronto Police Service's use of long-range acoustic devices.[35] While buoyed by this result, the CCLA was deeply concerned about the passage and effect of Regulation 233/10. The organization wrote to the Minister that day seeking clarification of the Ministry's intentions and expressing alarm that:

> … the public was not in any way put on notice that the Public Works Protection Act would be used as legal authority to detain, question, search and arrest individuals on public streets and sidewalks.

179 In its letter to the Minister, the CCLA noted that "the powers granted by the legislation significantly depart from common understandings of what individuals' constitutionally guaranteed rights are on a public street or sidewalk," and was highly critical of the lack of consultation and general secrecy surrounding the passing of Regulation 233/10:

> Secretly drafting and passing regulations that substantially erode democratic rights, and then enforcing these new laws without giving the

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[35] *Canadian Civil Liberties Association* v. *Toronto (City) Police Service*, [2010] O.J. No. 2715, 2010 ONSC 3525; supplemental reasons at [2010] O.J. No. 2716, 2010 ONSC 3698 (Ont. Sup. Ct.) (QL).

> public or legal community any warning, circumvents democratic accountability and puts innocent individuals at risk of criminal arrest and conviction.
>
> It is quite clear that the government has taken steps to significantly decrease individuals' legal rights on public property in a manner that is quite divergent with common understandings of civil liberties. The failure to cite this novel and highly controversial legal authority, or to clarify the government's position regarding legal limits on individuals' constitutional rights is unprecedented. We urge you to investigate this matter. In our view, Torontonians have been misled.

180 While the Toronto Police Service had stressed that it did not want the ISU speaking publicly about the Act, ISU's communications team had also been caught off guard by news of its existence, and were left scrambling to prepare for potential inquiries. Recognizing the constitutional issues that this regulation posed, on Friday, June 25, a federal government lawyer recommended that the ISU adopt media lines that would pass the buck on questions about the constitutional validity of the regulation to the province. Those draft questions and answers for media responses read: "Q: Do you think use of this regulation by the TPS is constitutional? A: You may wish to address this question to the Government of Ontario…." The federal proposal embarrassed Ontario officials. After reviewing the draft media lines late that night, a Ministry counsel wrote in an email, "I don't think this kind of messaging created by federal lawyers helps Ontario in the least." In the end, the ISU media lines finalized on Saturday, June 26 simply said: "Q: Do you think use of this regulation by the TPS is constitutional? A: Those kinds of questions are ultimately settled by the courts…."

181 There was still no public clarification by the Chief on Saturday, June 26. In addition, despite the ongoing efforts of Ministry officials to explain the scope of the regulation to individual journalists, the media continued to mistakenly refer to the "five-metre rule." The Ministry's monitoring of social media also disclosed that people were being stopped and searched by police under the *Public Works Protection Act* well outside of the security zone.

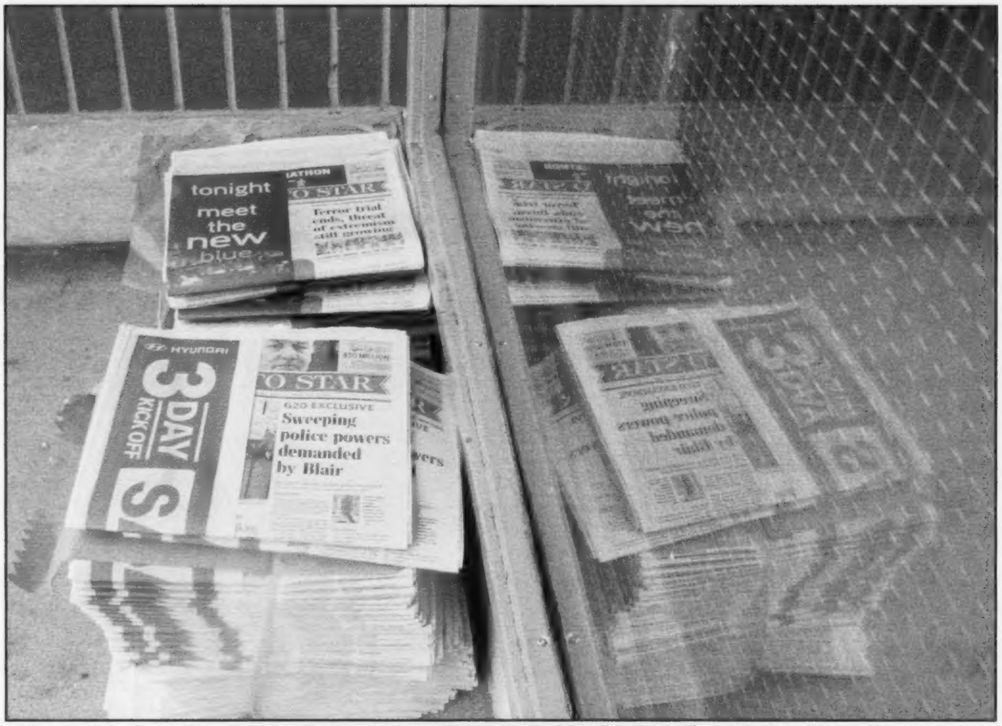
tonight
meet
the
new
blue
Terror trial ends, threat of extremism still growing
HYUNDAI
3 DAY KICK OFF
G20 EXCLUSIVE
Sweeping police powers demanded by Blair

Figure 34: June 26 - Stack of newspapers from June 25 with headline "Sweeping police powers demanded by Blair." (Photo by Alfred Ng)

182 While the Chief did not make any public announcement to correct his earlier comments about the "five-metre rule," he did provide the Ministry with evidence that it had been clarified for Toronto Police officers. Around 11 a.m. Saturday morning, the Chief provided the Commissioner with a copy of an email containing advice from the Chief's legal counsel that the Act "does NOT extend outside the fence," as well as a document containing revised instructions being given to officers with respect to the Act. The instructions summarized the Act and the regulation and detailed where the powers under the Act could be exercised:

> The PWPA and the Regulation **do not** confer authority on a police officer to compel people to identify themselves, be searched and be exposed to arrest for failing to comply **other than in situations where a person is entering or trying to enter the designated area**. The area designated by the Regulation as a public work **does not extend** outside the boundary of the fence.
>
> In general, this covers an attack on the fence line.

183 The instructions also stated:

> With respect to search provisions, as always, officers must be able to articulate their reasons for carrying out the search such as observations or description of circumstances that lead the officer to believe the person may pose a threat to the public work. As in any case, the search must be authorized by law, the law must be reasonable and the manner in which the search is carried out is reasonable.

184 The instructions ended with a list of "reasons for utilizing the Act and obtaining a designation for the IZ [interdiction zone] and fence." This section referenced the fact that police have always had authority under the Act to protect public works, while at the same time emphasizing that the authority was only to be exercised in the interdiction zone for the purpose of ensuring the safety and security of individuals lawfully within the zone as well as to secure the fence. The list also included reference to public messages about threats to "tear down the fence," and indicated that the intention of the regulation was **not to limit peaceful protest** near the perimeter.

185 It is not clear how or when these amended instructions were transmitted to frontline officers. Police obviously received some training on the *Public Works Protection Act* prior to the summit, since the Act had been cited as a basis for searches in the days leading up to it. The information we obtained during our investigation also indicates that some officers continued to apply the Act well beyond the security perimeter even after the scope of Regulation 233/10 had been clarified.

186 By the afternoon of June 26, the controversy over Regulation 233/10 and the "five-metre rule" had taken a back seat to the furor incited by the "black bloc" rampage and the mass arrests and detentions. It wasn't until June 29, after the summit had ended and the public works designation had expired, that the Chief acknowledged that the "five-metre rule" had never existed. At that point, the story of the day was that the police had deliberately misrepresented the boundary of the designated public works to, in the Chief's words, "keep the criminals out."

Figure 35: June 25 - Masked protesters prepare to march on Carlton St. (Photo by David King)

187 As the aftershocks of the G20 summit weekend subsided, the Ministry turned its attention to damage control concerning its role in enabling the unprecedented use of the *Public Works Protection Act*.

Tell Me No Secrets, I'll Tell You No Lies

188 At his June 29 press conference, the Toronto Police Chief spoke forcefully in defence of the security action undertaken during the summit. To deflect criticism that the legal authorities used to police the security zone had been kept secret, he stressed that the city had taken out advertisements in several languages and distributed more than 1 million flyers explaining the authority applying during the summit and what citizens could expect in the security zone.

189 The next day, the Minister of Community Safety and Correctional Services wrote to two newspapers, similarly emphasizing that information about searches in the security zone had been widely publicized through public notices, including advertisements in local newspapers and on the City of Toronto's G20 website. In the days following the summit, the government continued to refer to these advertisements and website notices to support its position that information about the impact of the regulation had been publicly available in advance of the summit. During our investigation, the Commissioner of Community Safety also indicated that the Ministry thought the effect of the regulation had been clearly articulated through handouts, leaflets and websites.

190 One of the primary sources for local information about the G20 summit was the City of Toronto. City officials had indeed engaged in extensive public outreach in advance of the Summit.

191 On May 31, 2010, the City of Toronto commenced delivery of 1 million copies of the summer issue of the its publication *Our Toronto*, containing an article entitled "What to expect during the G20 – June 26 & 27, 2010." The article discussed the security zones and traffic and public transportation relevant to the summit. At the time, it was anticipated that increased security would not affect movement in the security zone until Friday evening, and the article noted:

> The Toronto Police Service hopes that members of the public will be able to move freely throughout the fenced perimeter until the evening of Friday, June 25.

192 The city also distributed some 10,000 flyers to residents in the affected area. These contained general information about security for the summit and expected effects on traffic.

193 Neither the article nor the flyers mentioned the *Public Works Protection Act*, Regulation 233/10 or the possibility that citizens might be required to identify themselves and submit to searches if they wished to enter the security zone from June 21 through June 27. City officials told our investigators that the information in the article and the flyers had come from or been approved by the ISU, and that the city had been completely unaware in preparing these documents that the Chief of Police had requested a designation under the *Public Works Protection Act.*

194 The city had also prepared advertisements about the G20 summit for local newspapers in consultation with the ISU. City officials advised us that on June 13, the Toronto Police Service contacted city communications staff and asked that the following information be inserted into their G20 advertisements:

> …based on the discretion of the officer and the circumstances presented, anyone requesting access to the security perimeter may be subject to search. Vehicles will be subject to an external search using a mirror to access the undercarriage and trunks will be searched. These searches are being done for security purposes, to assist police with providing a safe environment for the summit.

195 Apparently, no explanation was given as to why the police felt this additional information was necessary, and at that point, it was too late to change the advertisement, which had already been finalized and distributed for release. The original version of the advertisement, which did not mention searches, ran from June 16 to June 25 in the ethnic press in 11 different languages. It also appeared in the *Toronto Star* and *Toronto Sun* on June 16 and in Metroland community papers on June 17.

196 A revised advertisement including the additional wording proposed by the Toronto Police appeared for the first time on June 19 in the *Toronto Star*. It later ran in both the *Toronto Star* and *Toronto Sun* on June 21, and again in the *Toronto Star* on June 26 and 27. The amended version of the advertisement only appeared in English. Similar information was posted on the City of Toronto's website.

197 As noted previously, the ISU's website, which contained information for demonstrators about the G20 summit, did not refer to the *Public Works Protection Act*, Regulation 233/10 or set out the police powers conferred by the Act. However, at some point, the ISU site was updated to provide a link to the City of Toronto's revised advertisement. The Toronto Police Service website did not contain any information on the Act or Regulation 233/10.

198 By the evening of Saturday, June 26, the Ministry was desperately seeking to defend its actions in relation to Regulation 233/10 and searching for evidence that the public had been notified about the increased security measures at the summit. To this end, a teleconference with city officials was scheduled for the next day. The discussion that took place on June 27 appears to have been rather heated. As one witness described it, city officials made it clear that they had no knowledge of Regulation 233/10 at the time the advertising was done, and that it would be "disingenuous" to suggest that the advertisements were intended to give "any kind of notification" about it. This version of events is supported by an email sent later that day to the Ministry by a city official who had participated in the meeting, in which he stated:

> the City's communications related to the G20 were designed to augment and supplement the lead communication role of the RCMP-led ISU communications group … the communications staff that worked on G20 … learned of the regulation when it was reported in the media. Therefore, no link in any manner – either direct or indirect – should [be made] between the regulations and the City's advertisement or communications … none of the City's communications should be characterized as having served as "notice" or "notification" of the regulation… we do not see how pointing out the City's public communications in a discussion of the Act

or regulations serves the objective of explaining the existing powers in the Act or the new regulation.

199 The revised advertisement referred to the possibility that people might be searched when accessing the security perimeter. Given that the advertisement was received two days **before** the Chief received formal confirmation that the regulation had passed, it is impossible to take seriously any suggestion that it was intended to give notice of Regulation 233/10 or the provisions of the *Public Works Protection Act*. Aside from making no reference to the Act or regulation, the information about the scope of the police powers under the Act is also too incomplete to serve that purpose. There is no information about the identification requirement, nor is there reference to the possibility that individuals could not only be turned away but actually arrested for merely declining to provide identification or to submit to a search. Nor is there information about the time frame during which the increased security measures would apply.

200 In the days after the summit, Ministry communications staff continued to respond defensively to media inquiries. In one case, an official advised a reporter – inaccurately: "Our regulation did not give police one iota of extra power that they did not have prior to the regulation." In another, a government spokesperson advised that the application of the regulation by police over the weekend was operational in nature, and the Ministry could not interfere in operational decisions, and also stressed that "the language of the regulation is very clear." In contrast, the same official acknowledged that the regulation was "confusing," but dismissed its significance, advising incorrectly that there had never been any arrests under the *Public Works Protection Act*.[36]

201 The mantra that Regulation 233/10 did not provide police with any new powers or broad authority and that it was passed in the same manner as all other Ontario regulations was frequently repeated by Ministry staff, and quoted by the Premier's office in responding to various inquiries and complaints.

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[36] The Ministry later determined that there had been two arrests under the Act.

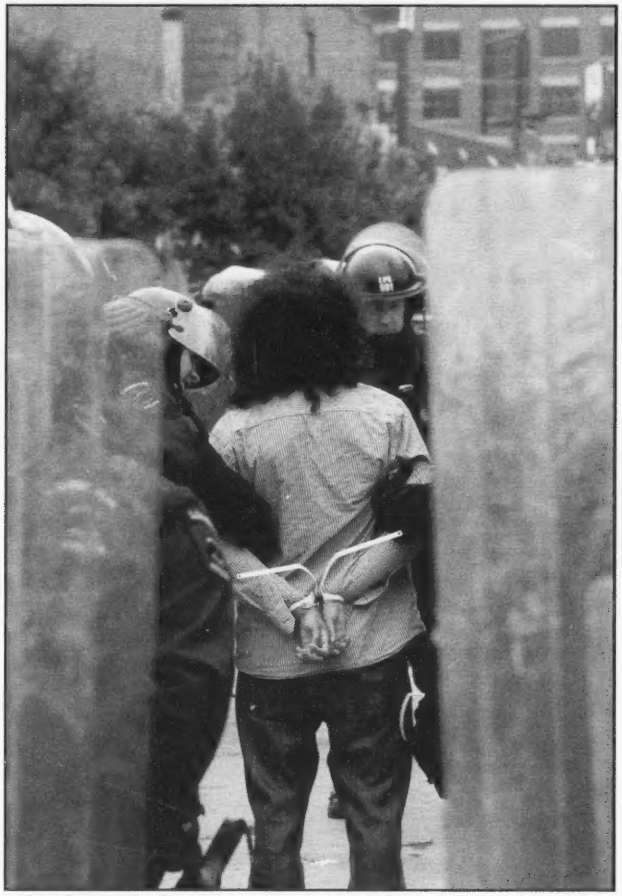

Figure 36: June 27 - Protester arrested at Queen St. and Spadina Ave.
(Photo by Rob Kittredge)

202 The Ministry also rejected any suggestion that it should reconsider the use of the *Public Works Protection Act*. An internal Ministry communication on June 29 stressed:

> If pressed about calls for a legislative review… we have no plans at this time to open up the Act…. a regulation is NOT a legislative amendment or a public process.

203 As outrage over the events relating to the G20 summit continued, serving as fodder for media stories and protests, the Integrated Security Unit partners also considered how they should respond. While it appears there was some discussion amongst the members of the ISU steering committee about holding a joint press conference to address issues arising from the summit, the communication breakdown around Regulation 233/10 was one of a number of issues that prevented the ISU partners from presenting a united public front. A July 1 OPP internal email recounted a discussion between OPP and RCMP officials concerning the proposed press conference, in which it was agreed that it would not be a good idea to participate. The author of the email offered a number of reasons:

> TPS has made many public mistakes over the last 72 hours…
>
> They have been caught misrepresenting the weapons they displayed at the press conference. Not G20-related.
>
> They have misrepresented who initiated the PWPA. Blaming the ISU when it was clearly a TPS request.
>
> The TPS member of the steering committee was not present during critical periods.
>
> If a joint press conference were to be held, the questions would be very direct and we would either be forced to contradict TPS in front of the media or by silence tacitly endorse what they say.
>
> The public has largely supported police security operations for G20. What is not supported is the actions by TPS and the inconsistencies of answers they continue to provide…

204 While initially the Ministry maintained its self-protective stance, new insight was achieved in the face of continuing public pressure. On July 2, the Premier expressed regret for the confusion that the regulation had created and acknowledged that the government should have done a better job in clarifying it after it was mischaracterized.[37]

205 By July 7, the Minister too had acknowledged that the Ministry could have been more aggressive in getting the message out after the Chief misspoke about the "five-metre rule." He reflected in hindsight:

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[37] Maria Babbage, "Dalton McGuinty admits he could have done better but offers no apology for G20 confusion" *The Toronto Star* (2 July 2010), online: The Toronto Star http://www.thestar.com/news/gta/torontog20summit/article/831570--dalton-mcguinty-admits-he-could-have-done-better-but-offers-no-apology-for-g20-confusion .

> There's absolutely no doubt that there was that lack of clarity, and had we put out a statement immediately, we probably would have been able to handle this a little bit better.[38]

206 In his July 29 response to the Canadian Civil Liberties Association's June 25 letter concerning Regulation 233/10, the Minister emphasized that the regulation was intended to provide greater legal certainty regarding the authority of the police to take certain measures to help with respect to the security zone. However, he acknowledged that "in hindsight, it could have been better communicated."

207 On September 2, the Toronto Police Chief also publicly recognized that he should have taken steps sooner to stop the mass arrests on June 26.[39]

208 As civil rights groups continued to rail against the conduct of law enforcement officials during the summit, including the use of Regulation 233/10; as a surfeit of complaints were filed and lawsuits were commenced; and as lawyers and academics waded in to question the constitutionality of the *Public Works Protection Act*, the Ministry reconsidered the advisability of continuing to stand behind the ancient war measures legislation. By September 22, the Ministry retreated from its uncompromising support for the Act. On that day, the government announced that the *Public Works Protection Act* would be subject to a review, this time in consultation with lawyers, police, civil liberties groups and other stakeholders. The newly minted Minister of Community Safety and Correctional Services remarked:[40]

> We need to make sure our laws reflect the security concerns and values of our society today.

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[38] "No more G20 Summits in Toronto: McGuinty" *Canadian Press* (7 July 2010), online: CBC News http://www.cbc.ca/politics/story/2010/07/07/g20-mcguinty.html#ixzz0t61X0yvR .

[39] Kate Allen "Police made mistakes in G20 tactics, Chief admits for first time" *The Globe and Mail* (3 September 2010), online: The Globe and Mail http://www.theglobeandmail.com/news/national/toronto/police-made-mistakes-in-g20-tactics-chief-admits-for-first-time/article1694815/.

[40] The former Minister was transferred to the post of Minister of Municipal Affairs and Housing effective August 18, 2010.

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Figure 37: July 10 -Demonstration at University Ave. and College St. (Photo by Jackman Chiu)

209 While some Ministry officials have acknowledged in retrospect that they should have issued a statement of some kind when things "spun out of control," it is disturbing that they also appear to have been somewhat baffled by the "fuss" that Regulation 233/10 generated. As the former Deputy Minister observed on June 28:

> I think this has become an issue unexpectedly. Who would have thought a 70-[year]-old piece of legislation would create such a stir.

210 A review of Ministry emails rehashing events in the days after the summit suggests that insiders were initially prepared to deflect responsibility for the Regulation 233/10 fiasco. Those emails focus much of the blame for criticism of the Ministry on the Chief's public relations gaffe, and on "an inattentive media" which had failed to notice the regulation on e-Laws and continued to report inaccurately on the "five-metre rule" even after it was clarified by the Ministry. Ministry officials did not appear to have been prepared to shoulder any blame for promoting the use of the Act during the summit or for the unwise consultation and communications strategy adopted in relation to Regulation 233/10.

211 The Ministry's more recent change of heart concerning review of the Act suggests that sober second thought may have led to the realization that assisting the Toronto

Police Service through resorting to martial law might not have been the wisest course of action.

Questionable Power

212 It is not surprising that Ontario is the only province to have war measures legislation remaining on the books. The powers conferred on peace officers by the *Public Works Protection Act* are stunning in their compass and are worth reviewing here. Under the Act, when a building or place qualifies as a public work, police may require anyone attempting to enter to identify themselves and to explain why they need entry, "in writing or otherwise." They may also search such persons and their vehicles without warrant and refuse permission to enter, as well as use force to achieve this. Most significantly, those who neglect or refuse to comply with a demand or direction made by a peace officer for information, or who neglect or refuse to submit to a demand that they be searched, commit an offence and are liable not only to a fine of $500 but to imprisonment of up to two months. In this era of the *Charter*, these provisions appear sorely out of place. Ontarians are ordinarily free to enter public spaces and buildings and to walk the streets.

213 Not surprisingly, after the events of June 2010, many have raised serious and valid questions about the constitutionality of the *Public Works Protection Act* in connection with public works other than prominent buildings, and specifically in relation to the manner that it was employed at the G20 summit. Indeed, the OPP in rejecting use of the Act during the G8 summit, opined that "it would not likely stand up to a constitutional challenge," and at least one federal lawyer advising the Integrated Security Unit appeared eager to leave it to the Ministry to provide constitutional justifications for employing it during the G20 summit.

214 I cannot ignore these concerns. There are serious questions that arise about the legality of the regulation that are central to the reasonableness of the decision to enact it. I appreciate that I am not a judge and that it is uncommon for the Ontario Ombudsman to be offering conclusions about what the law requires, but in addition to determining whether the conduct I investigate is "unreasonable, unjust or oppressive," I am required by the *Ombudsman Act* to form an opinion as to whether that conduct appears to be "contrary to law" or whether it is "in accordance with the provision of any Act that is or may be unreasonable, unjust, oppressive, or improperly discriminatory." In discharging my mandate in this investigation, I am therefore required to offer my opinion to the Ministry and the government of Ontario not only about the reasonableness of the measures taken, but also about their apparent legality.

215 The place to begin is with the obvious constitutional questions. I will then explore the more basic question of whether the statutory authority to enact this regulation even existed.

Don't Fence Me In

216 The *Public Works Protection Act* was subject to an unsuccessful *Charter* challenge in the case of *R. v. Campanella*.[41] Ms. Campanella questioned the constitutional validity of the search and seizure powers contained in section 3(b), specifically in the context of a courthouse search that was conducted at the John Sopinka Courthouse in Hamilton. Visitors to that courthouse are required to subject themselves to a weapons search. They must pass through metal detectors and have their bags inspected. When Ms. Campanella's bag was searched, marijuana was found. She argued at her drug possession trial that the search was unconstitutional and that the discovery of the marijuana should therefore be thrown out.

217 Under *Charter* authority, a search is unconstitutional unless it is authorized by law. The search of Ms. Campanella met this requirement because the John Sopinka Courthouse is a provincial building that falls within the definition of a "public work" under the *Public Works Protection Act*. As a result, "guards" and other peace officers are authorized by law, specifically by section 3(b) of the *Act*, to conduct warrantless searches of those who are attempting to enter. This finding did not entirely resolve the issue, however. Even a legal search will be unconstitutional if the law authorizing that search is unreasonable. This is what Ms. Campanella focused on. She argued that it is unreasonable for the statute to permit warrantless random searches at a courthouse door. The Ontario Court of Appeal disagreed. The court cited the history of violence and threats experienced by justice system participants, including in courthouses, and held that it was reasonable to counter such threats by permitting those attempting to enter a courthouse to be searched randomly for weapons without warrant.

218 As important as the decision in *R. v Campanella* is, the case does not determine the constitutional validity of all of the provisions of the *Public Works Protection Act* for all purposes. *Campanella* had to do solely with whether section 3(b) of the statute contravened the constitutional right to be free from unreasonable search and seizure. The court's decision emphasized that the constitutional reasonableness of searches varies with context, and the case dealt only with courthouse searches for weapons where there was evidence-based concern for public safety, the security screening process was readily apparent, those choosing to leave rather than undergo screening were free to do so and all those without prior security clearance were equally required to submit to a search. More importantly, the case has nothing to do with other kinds of constitutional challenges, such as freedom of expression challenges.

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[41] *R. v. Campanella*, supra note 18.

219 What is directly at issue here is the constitutional validity of Regulation 233/10. Regardless of the constitutional validity of the statute under which it was passed, if the **purpose** or **effect** of Regulation 233/10 was to contravene one of the rights or freedoms guaranteed by the *Charter*, it would be unconstitutional unless it can be defended by the government of Ontario as a justifiable limitation on the relevant *Charter* right or freedom.

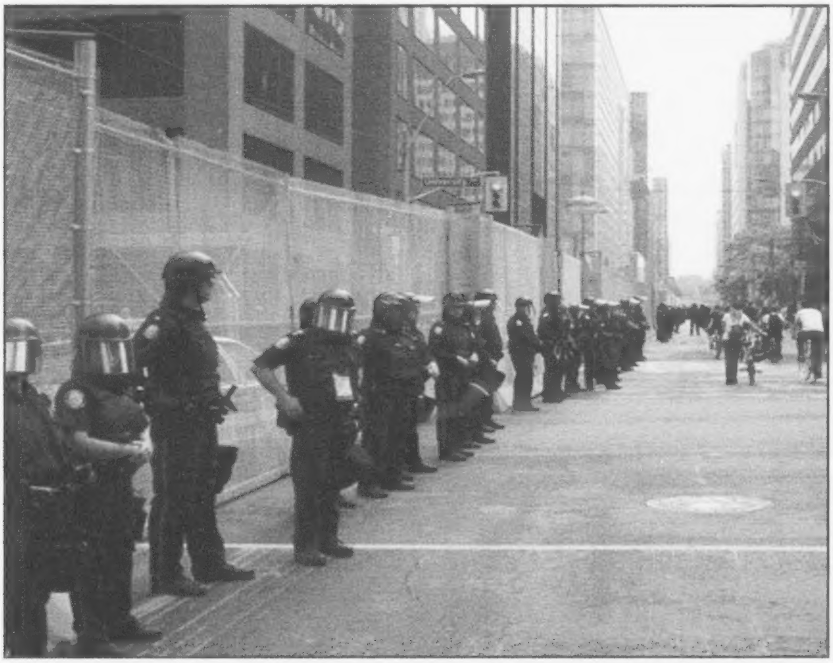

Figure 38: June 26 - Police at the fence near King St. West and University Ave. (Photo by George Tulcsik)

220 It is section 2(b) of the *Charter*, the "freedom of expression," that was implicated by the passage of Regulation 233/10. The concept of "freedom of expression" is widely conceived under the *Charter*. Any attempt to communicate information other than by violence is protected.[42] This aggressive constitutional freedom was entrenched in the *Charter* to promote democracy and good governance by opening channels of communication on matters of government policy, including through protest. The right to protest is so important that the Supreme Court of Canada has recognized that not only is expressive activity protected, "so too is the right to such activity in certain public locations,"[43] including the streets of our communities.[44] Regulation 233/10 was passed to regulate protest and therefore implicated the freedom of expression guaranteed in section 2(b) of the *Charter*. Did it infringe or deny that freedom, either in its purpose or in its effect?

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[42] *Irwin Toy Ltd. v Quebec (Attorney General)*, [1989] 1 S.C.R. 927 at para. 42.

221 There is no fair basis for suggesting that the Ministry's **purpose** in recommending the passage of Regulation 233/10 was to infringe or deny freedom of expression. The Ministry's stated purpose in promoting the regulation was to assist the Toronto Police Service in having clear and consistent authority for maintaining the security perimeter. More fundamentally, the regulation had the laudable purpose of protecting participants from harm either from terrorist enemies or from protesters. As indicated, violence or the threat of violence by anyone, terrorist or protester, is not a protected form of free speech.[45]

222 Still, Regulation 233/10 did have the **effect** of limiting enjoyment of the constitutional right of freedom of expression, even though the Toronto Police Service has asserted that in requesting that the Ministry assist it in obtaining Regulation 233/10, it had no intention of limiting peaceful protest **near** the security perimeter.

223 The whole point in protecting freedom of expression is to permit messages to be communicated. By creating a security perimeter that separated protesters from participants, the ability of protesters to communicate directly with those they wished to influence was infringed, if not denied. The constitutional freedom of expression also protects the right to communicate in public places where one would expect the constitutional protection of free speech, such as public streets. Regulation 233/10 denied protesters access to public streets where democratic discourse would ordinarily be expected and permitted. On the test provided for by the Supreme Court of Canada, Regulation 233/10 therefore infringed upon freedom of expression and would have been constitutionally invalid unless the government of Ontario was able to demonstrate that it was a justifiable limitation on that freedom.

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[43] *Greater Vancouver Transportation Authority v Canadian Federation of Students – British Columbia Component*, [2009] 2 S.C.R. 295 at para. 27.

[44] *Montreal (City) v 2952-1366 Quebec Inc.*, [2005] S.C.J. No. 63 (QL).

[45] Supra note 42 at para. 42.

224 In order to be justifiable, Regulation 233/10 would have to have satisfied the multi-faceted test established by the Supreme Court of Canada in *R. v Oakes*.[46] That is, it must have been (1) prescribed by law, (2) enacted for a pressing and substantial concern, and (3) it must pass a three-part proportionality test.

225 Standard (1), the prescribed by law test, is obviously satisfied. A regulation is, by definition, a "law." The limits imposed by Regulation 233/10 on freedom of expression were therefore "prescribed by law."

226 It is equally certain that standard (2) was met. The interests pursued by Regulation 233/10, including the security of participants at the G20 summit, were pressing and substantial. There has been an established history of violence and threats of violence at similar summits internationally and in Canada, making it imperative that participants be protected.

227 The key issue is whether the security perimeter that was established and the police powers triggered by Regulation 233/10 could pass the three-part test of proportionality. The first part of this test is obviously satisfied. In order to meet this requirement, the decision to erect a security perimeter for controlling access must be a rational way of protecting the security of the participants. As demonstrated by the *R. v. Knowlton*[47] decision, which used common law police powers to permit a security perimeter to be established – and as supported by common sense – controlling physical access to at-risk individuals is an important means of ensuring protection. Giving police officers extensive powers of search, detention and arrest may be controversial but it is not pointless. There is a rational connection between the goal and the strategy.

228 The second distinct proportionality standard requires that the law in question must be "minimally impairing." The idea is that where it is necessary to limit a constitutional right, the right should be limited only as far as necessary to achieve the relevant goal, which must be pressing and substantial. The pertinent questions, as I see them, are whether the nature of the barrier was more intrusive than it needed to be, and whether it was necessary to give police the extensive powers conferred by the *Public Works Protection Act* in order to ensure the security of participants.

229 On the first question, the barrier was transparent, permitting protesters and participants who were in physical proximity to it to see each other. It would be difficult to focus on the design of the fence in arguing disproportion. It is also possible that a court would defer to the judgment of security officials on the issue of whether the security zone was larger than required. It is likely that the actual perimeter supported by Regulation 233/10 would be found to be minimally impairing.

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[46] *R. v. Oakes*, [1986] 1 S.C.R. 103.

[47] Supra note 23.

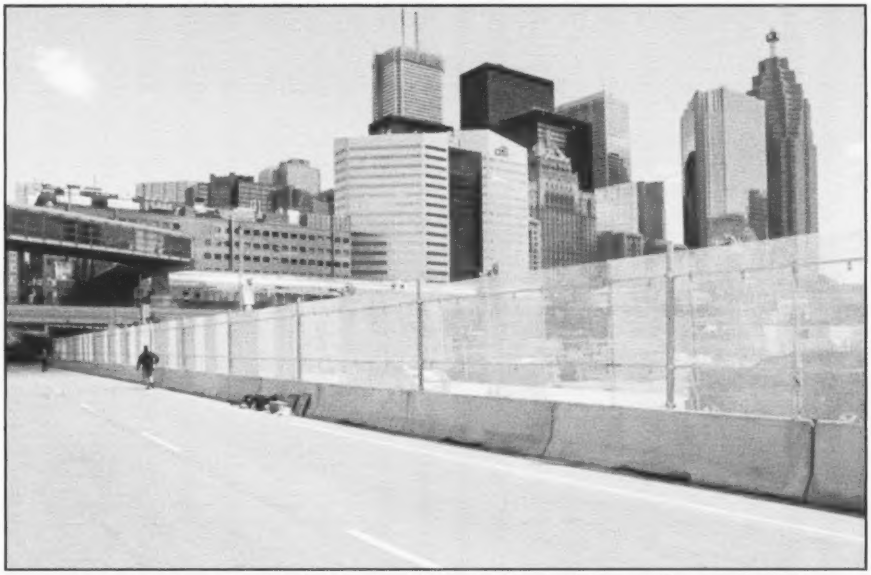

Figure 39: June 8 - The fence along Lower Simcoe St. near Bremner Blvd. (Photo by Tomasz Bugajski)

230 The second question is the problematic one. Was it really necessary to confer the police powers created by the *Public Works Protection Act*, exercisable in the protest context, in order to protect G20 participants? I have serious reservations about this. Security could have been provided by enabling peace officers to deny entry to individuals **for security reasons** and to search those who were entering for weapons. Yet section 3(c) empowered peace officers to "refuse permission to any person to enter a public work" and imposed no express limits on why access could be refused. This is unlike the Federal *Foreign Missions and International Organizations Act*, which empowers the RCMP to deny entry "for the purpose of carrying out its responsibilities under subsection (1)" which is described as "to ensure the security for the proper functioning of any intergovernmental conference." The powers to deny entry conferred by the *Public Works Protection Act* therefore seem to go farther than required because there are no criteria limiting the discretionary power of the peace officers. Unless a court is prepared to hold that it is implicit in the statute that the power to exclude must be exercised solely for security purposes, the authority contained in clause 3(c) would likely be constitutionally overbroad and incapable of supporting a justifiable limit on freedom of expression.

231 The most significant challenge in attempting to justify Regulation 233/10 in the face of a freedom of expression challenge, however, arises from the combined effect of sections 3 and 5 of the *Public Works Protection Act*, which Regulation 233/10 triggers. Those provisions empower peace officers to arrest protesters who refuse or neglect to answer questions when trying to enter either a "public work" or its "approaches." Surely it would be enough in protecting participants to empower peace officers to prevent the entry of such persons without arresting them. It strikes me to be a disproportionate interference with the protesters' freedoms to permit their arrest for failing to give good reason for entering, when simply denying them entry would be sufficient. This would leave them free to protest outside of the fenced area instead of languishing in a lockup. I therefore have serious doubts about whether this essential part of the *Oakes* test could be met.

232 The third proportionality inquiry asks whether the overall benefits of a law outweigh its negative effects. The question would be whether the security gains to be made by Regulation 233/10 are valuable enough to outweigh the costs of limiting access by protesters in the way that it did. There is no precise measure for making that decision. It is worth noting, however, that the Ministry was of the view that the regulation was unnecessary, as the Toronto Police would have continued with the security perimeter pursuant to other lawful authority. It is therefore difficult to imagine that Regulation 233/10 had the kind of value needed to pass this constitutional threshold.

233 Ultimately, I have real reservations about the constitutional compatibility of Regulation 233/10 with the demands of freedom of expression. The problem is not that Regulation 233/10 supported a security perimeter. That would have been fine had that been its only role. The problem rests in the excessive police powers that passing the regulation triggered. Had Regulation 233/10 been challenged under the *Charter*, there are serious questions about whether it would have passed constitutional muster.

Putting Square Fence Posts in Round Holes

234 The *Public Works Protection Act* clearly provides for designation of "a building, place or work" as a public work (s.1). While it does not specify that this designation must be accomplished through regulation, the Act does confer authority to pass regulations "respecting any matter necessary to carry out the intent and purpose of the Act." (s.6(c)).[48] In order to be legally authorized and valid, Regulation 233/10 had to be passed to support the "intent and purpose of the [*Public Works Protection Act*.]" There is strong reason to believe it was not. Simply put, the intent and purpose of the *Public Works Protection Act* is to protect public infrastructure; Regulation 233/10 was not passed to secure places, it was passed to protect persons, whether inside public works or not. Altogether apart from its *Charter* problems, Regulation 233/10 was therefore probably illegal. There was no authority under the *Public Works Protection Act* to pass it.

235 The ill fit between purposes seems clear. The historical context of the *Public Works Protection Act* and the comments of the then Lieutenant Governor make it evident that the "intent and purpose" of the *Public Works Protection Act* was to guard government infrastructure from sabotage. This is equally apparent from the terms of the statute itself. The things described expressly as "public works" in the statute are mainly buildings or public utilities that could be destroyed. Moreover, the statute allows for the appointment of guards to fulfill the objects of the statute; section 2(1), which permits their appointment, is explicit that those guards are to be appointed "for the purpose of protecting a public work."

236 For its part, it is equally obvious that Regulation 233/10 was not passed to guard government infrastructure from sabotage and was aimed at the security of dignitaries. Consider the fact that three discrete strips of land were designated to be "public works." This was done solely to complete the barrier between outsiders and G20 meeting participants. These three "places" had no inherent "public" character and there was clearly no intention to protect them in their own right. They were not susceptible to sabotage. They were included in Regulation 233/10 solely for the purpose of controlling entry to a secured area. This was done to protect the people inside. Some of the buildings fenced in by the zone were public works, but many were not. None of the government buildings that were inside the perimeter were special in any way. Nor were those government buildings inside the perimeter any more susceptible to sabotage than the public works left outside the protected zone. Indeed, the orgy of property destruction on Saturday, June 26 suggests that public works immediately outside the zone were as at risk. Quite clearly, Regulation 233/10 was enacted in order to assure legal authority to the police for the erection of a security perimeter at the G20 summit to protect summit attendees. The context of its passage shows this to be so.

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[48] Other authority is provided in subsections 6(a) and (b) for passing regulations under the *Act*. Neither pertain here. Subsection 6(a) refers to regulations concerning guards. Subsection 6(b) permits "approaches" to public works to be defined; Regulation 233/10 does not define approaches to public works; it purports to designate the public works themselves.

237 Even the Ministry's stated purpose in promoting the use of the *Public Works Protection Act* through Regulation 233/10 was to protect people, specifically visiting dignitaries. The *Public Works Protection Act* authorized regulations to protect buildings and places; Regulation 233/10 was passed for the unauthorized purpose of protecting persons. The reasonable conclusion is that the regulation was not therefore properly authorized by the legislation.

238 I need to be clear here. I am not saying that the protection of public works under the *Public Works Protection Act* cannot be undertaken for the incidental or ancillary purpose of protecting those inside the public works from injury from misadventure. In this case, however, the impetus was not about places or infrastructure with the incidental protection of those inside. Rather, the impetus was the protection of individuals, with any public works that happened to be protected in the process being incidental. Designating places as protected public works was not an end in itself; it was a means to an entirely different end.

239 I am also mindful of the fact that in *R. v. Campanella,* the Ontario Court of Appeal recognized a role for the *Public Works Protection Act* in securing courthouses to prevent violence to occupants. That case did not involve a designation by regulation and so did not raise the issue of whether a regulation advanced the statute's "purpose and intent." More importantly, the issue of the purpose and intent of the enactment was not litigated; its application was assumed without analysis, as the sole challenge was to the reasonableness of the compulsory searches that were occurring.

240 Accordingly, I believe that in this case, a statute intended for one purpose was used for another, and powers conferred for one purpose were co-opted for an unauthorized one. The regulation-making power created by the statute was therefore exceeded. As a result, it is likely that Regulation 233/10 was *ultra vires* and the designation of gaps in the security perimeter and other works within the perimeter as public works was illegitimate.

Setting Reasonable Boundaries

241 Given therefore my view that the regulation was likely unconstitutional, the Ministry acted unreasonably when it agreed to the Toronto Police Chief's request to put forward a proposal for designation under the Act. I want to be clear that I have no basis for concluding that this was done with knowledge of these legal problems. Legitimate reliance by the Ministry on solicitor-client privilege prevents me from exploring the legal advice the Minister received about the lawfulness of

Regulation 233/10, and so I am left in the dark about what actually occurred. Notwithstanding this, based on my analysis of the regulation, it is my opinion that the Ministry's decision to recommend the passage of Regulation 233/100 was unreasonable.

242 It should have been obvious to Ministry officials that, even leaving aside the patent problems of constitutional reach and questions about whether Regulation 233/10 was authorized by the Act, it was stretching the *Public Works Protection Act* beyond its appropriate reach to use it in this way. The legislation was manifestly passed to protect public works, not as a security vehicle for protecting visiting dignitaries. It is an unhealthy practice to use legislation passed for one purpose to achieve an entirely different purpose. Doing so diminishes the integrity of statutory authority and has the potential to arrogate powers to the government that have never been legislatively conferred. The decision to use this exceptional war measures legislation was, in my view, opportunistic and inappropriate. In the absence of proper legal authority in an area of *Charter* danger, if it was felt necessary to provide legislative support for the security plan, it would have been far better for the government to pass targeted legislation openly, with the issue of what police powers should follow being exposed to public debate.

243 The Standing Committee on Regulations and Private Bills is charged with the duty to review all regulations enacted, with particular attention to their scope and the method of exercise of legislative power.[49] The guidelines established for this review stress that regulations should be in strict accordance with the statute conferring the power, particularly concerning personal liberties, expressed in precise and unambiguous language and should not impose a fine, imprisonment or other penalty.[50] In recommending Regulation 233/10, the Ministry should have realized that this regulation was on, if not over, the edge of the permissible boundaries for the exercise of delegated legislative authority.

244 More importantly, by recommending the passage of Regulation 233/10, the Ministry endorsed the use by peace officers of extravagant powers that they did not require in order to provide security for G20 summit participants. It was unwise of the Ministry to decide to encourage arming police officers with the exceptional powers of the *Public Works Protection Act* in the predictably incendiary atmosphere of an international summit because of insecurity about the legal authority for the establishment of a security perimeter.

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[49] *Legislation Act, 2006*, S.O. 2006, c. 21, Sch. F, s. 33.

[50] Ontario, Legislative Assembly, *Standing Orders of the Legislative Assembly of Ontario* (Ontario: Clerk of the Legislative Assembly, January 2009), ss. 108(13)(i) and (ii), online: Legislative Assembly of Ontario http://www.ontla.on.ca/web/go2.jsp?Page=/house-proceedings/supporting-content/files/standing_orders&menuitem=dandp_proceedings&locale=en .

245 Not that it mitigates the problem, but there is reason to believe that Ministry officials might not have fully appreciated the extensive police authority being granted by the designation. They advised us that the decision to designate the security area a "public work" was more of a "backstop," as police already had sufficient and similar powers and authorities under the Act and the common law. In this context, designating three small areas of land as public works was perceived as a minor technicality and the impact on stakeholders as "moderate." In fact, police did **not** have similar powers in common law. Under common law, they could establish a security perimeter including over the three small areas of land referred to in Regulation 233/10 and screen and search those who entered, but there is **no** authority to arrest people who fail or refuse to answer, or who choose to walk away rather than subject themselves to a search. Regulation 233/10 changed the entire dynamic.

246 It is also important to recognize that some of the provisions of the *Public Works Protection Act* triggered by Regulation 233/10 have questionable constitutional validity. It was passed in the panicked atmosphere of war. Under the circumstances, its constitutional foundation should have been carefully examined before it was resorted to. Had this been done, it may well have been realized that there are significant *Charter* problems with the statute.

247 Specifically, section 4 of the *Public Works Protection Act* provides that during a prosecution:

> … the statement under oath of an officer or employee of the government, board, commission, municipal or other corporation or other person owning, operating or having control of a public work, as to the boundaries of the public work, is conclusive evidence thereof.

248 In other words, because of this provision no one is permitted to contradict the testimony of an officer or employee about the boundaries of a public work, even if that testimony is factually and demonstrably wrong. A provision like this, used in a prosecution for any offence, is contrary to the presumption of innocence guaranteed by section 11(d) of the *Charter*. Statutes that "presume" facts to be true have been upheld in the face of *Charter* challenges, but only where those statutes permit the presumed fact to be rebutted where it is inaccurate. This provision unquestionably goes farther than it needs to and it is most unlikely that it would survive *Charter* scrutiny.

249 More importantly, there is reason to believe that provisions of the *Public Works Protection Act* provide for arbitrary arrests, contrary to the *Charter*. Section 9 of the *Charter* makes it unconstitutional to deprive individuals of their liberty contrary to the principles of fundamental justice,[51] and it is a principle of fundamental justice that the liberty of individuals cannot be interfered with for no valid reason.[52] The combined effect of sections 5(1) and 3(a) of the *Public Works Protection Act* is to authorize arrest and detention – and therefore the deprivation of liberty – for no apparent, valid reason. It is important to appreciate that these provisions not only give peace officers the sensible power to prevent the entry to public works by those who give no justifiable reason for wanting to enter – they authorize the arrest of those who are turned away or walk away if they fail or refuse to explain why they wanted to enter in the first place, or if they fail or refuse to identify themselves. Once entry has been denied, there is no need for this.

250 Arresting those who attempt to enter in spite of being told not to is justifiable in the interests of maintaining security, but arresting those who turn away – simply because they do not explain why they want in or who they are – serves no valid security purpose. From what we can determine, it appears that at least two people – Mr. Vasey and Mr. Veitch – were arrested under the Act merely for failing to provide identification. To compound the situation, both of them maintain that they were not approaching or attempting to enter the security perimeter at the time of their arrests.

251 Notoriously, Regulation 233/10 was misinterpreted by the police. The Toronto Police Chief claimed that the regulation permitted the arrest of anyone who came within five metres of the perimeter fence, when, in fact, it was intended that the public works designation would operate only inside the security zone. The regulation was also the subject of considerable confusion amongst Ministry officials. This is not surprising. The regulation itself is extremely technical and difficult to grasp without recourse to a map. Even Ministry officials acknowledged that it was unclear. What is clear is that the powers under the Act, as opposed to the regulation, were applied by police to require individuals to identify themselves and submit to search, well beyond the security zone. Although this was not what was intended by the Ministry in promoting the regulation, by endorsing the use of the *Public Works Protection Act* and thereby calling attention to it, it gave officers a new tool in their arsenal to contain protest. Once the Ministry had taken steps to awaken the sleeping giant, it proved difficult to contain.

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[51] *R. v. Grant*, [2009] S.C.J. No. 32 (QL).
[52] *Rodriquez v. British Columbia (Attorney General)* [1993] 3 S.C.R. 519 at 594.

Figure 40: June 26 - Riot police near Bank of Montreal's Front St. headquarters. (Photo by George Tulcsik)

252 The Ministry cannot be faulted for the training provided to police officers. The police are responsible for knowing the laws that they enforce. However, the Ministry recognized the importance of training before Regulation 233/10 was passed, and I believe that the Ministry had some responsibility to ensure that the intended boundaries of the regulation were clear to those who had to administer it. This is particularly so, given the scope of the operation of the Toronto Police Service, which was responsible not only for its own officers, but for thousands of officers from across Canada who came to assist in maintaining peace and order around the G20 summit. Providing security for an international summit is a monumental policing challenge, and Toronto Police Service's role was very significant, given that it would be handling the lion's share of protests in the area outside the exterior security perimeter. These situations are tense, at times explosive, and the possibility of violence erupting is palpable. The powers of the *Public Works Protection Act* are quite breathtaking, and so is its potential for infringement of civil liberties. Given these conditions, use of Regulation 233/10 without proper guidance as to its scope or intent was a recipe for abuse.

253 We learned that York Regional Police officers assigned to G20 summit security did not find out about Regulation 233/10 until it was already in effect, even though some of these officers were actually responsible for fence security. Most York officers heard about the regulation through the media. The York Regional Police informed us that it sent about 450 officers to Toronto to assist the Toronto Police Service with the summit. York officers were assigned to various duties. Three teams of 41-49 officers, including supervisors, were assigned directly to the fence line, and a fourth team was stationed in the "the PATH" (a network of underground pathways in downtown Toronto) below the fence line. With respect to training regarding Regulation 233/10, the York Regional Police told us:

> At no time did he [the York Regional Police Inspector who acted as liaison during the summit with the Toronto Police Service] receive any material or information about the "fence line law" that could have been disseminated to the participating officers.

254 Apparently, the Toronto Police Service also provided no information about Regulation 233/10 to York officers when they checked in and attended morning roll call sessions on June 21 and 22, 2010. It wasn't until June 23, 2010, that some but not all, of the York Regional Police Supervisors were briefed on the Regulation, and began to educate other officers. Some officers received information about the Regulation, the Act and a document entitled "Toronto Police Service 2010 G20 Summit Interdiction Zone Access Policy and Procedure" while "street side." Other York officers apparently never received any information about the Regulation, because they were not working when the information was supplied or the information was never specifically provided to their team. The York Regional Police told our Office:

> As the summit carried on, most York officers became aware of the fence law through the media. Some did not find out until they saw the press conference with [the Toronto Police Chief] on Friday, June 25. It is unknown whether or not all York officers received the information about the fence line law, and if they did, when that notification actually took place.

255 To their credit, once it was apparent that the police had misconstrued the intent of the regulation, Ministry officials were quick to seek assurance that the mistake would be corrected. It was, however, a case of too little too late. While it is beyond my mandate to conclude that excessive force was used against protesters by police authorities, or that the Act was misapplied, lack of training about Regulation 233/10 appears to have at least contributed, in part, to the chaos and confusion that descended upon the city with the G20 summit.

256 The Toronto Police Service was not the only stakeholder whom the Ministry should have assured would know the full implications of the regulation. Other stakeholders were also directly and, in some cases, detrimentally impacted by its terms. They too should have been educated about it.

POLICE
POLICE

Figure 41: June 26 - Police and civilians at University Ave. and College St. (Photo by Ronnie Yip)

Best Kept Secret

257 The *Public Works Protection Act* may have been one of the best kept secrets in Ontario's legislative history, but technically it was not a secret at all. It had appeared in virtually the same form for decades in the Statutes of Ontario, a civil rights landmine waiting to be tripped.

258 It wasn't just a question of the Act not being on the public's radar; many lawyers weren't aware of it either. On top of that, it was evident from records we reviewed during this investigation, and from at least one OPP official, that a lot of police officers in the province had never heard of it. In this context, the Ministry's inadequate consultation leading up to Regulation 233/10's enactment, as well as its deliberate strategy to keep news of the regulation hidden for as long as possible, are quite startling.

259 During this investigation, the Ministry frequently maintained that it had to defer to the Integrated Security Unit in matters of security, including with respect to what information was to be disclosed to the public. However, the Ministry did not ensure that the ISU was officially consulted or notified about Regulation 233/10. It appears to have relied on others, primarily the Toronto Police Service, to relay information to the relevant parties, and in doing so, effectively kept the ISU operational command out of the communication loop. The ISU steering committee lead had no idea that the regulation had been proposed, let alone enacted, until he learned about it along with the general public. The manner in which the Ministry approached consultation actually left the ISU with no opportunity to assess whether G20 summit security interests would be better served by publicizing the regulation or by keeping its existence quiet. Since the ISU communications team didn't know about the regulation, the information it provided through its website, in media interviews and discussions with demonstration groups, and to businesses and residents in the affected area, was necessarily incomplete. It was also caught off guard when news of Regulation 233/10's existence went public. This situation was not only embarrassing, it created the potential for summit security interests to be compromised. Certainly, friction among ISU partners was not eased by the manner in which the consultation process was carried out.

260 While at some point the Ministry thought to ask whether the City of Toronto knew about the proposed regulation, no one seemed particularly concerned when it became clear that it did not. The regulation would impose virtual martial law on its streets – one would think that the city would have had a significant interest in knowing about it. The city also had the responsibility of notifying Torontonians about what to expect during the summit. In fact, the Ministry later – misguidedly, in my view – attempted to rely on the city's efforts to publicize summit security measures to suggest that notice of the regulation had in fact been given. City officials quite rightly pointed out that this was not the case.

261 Senior city officials advised that they didn't know about the regulation until it became public knowledge. Its advertisements were not intended to and did not provide notice of the effects of Regulation 233/10. It did engage in an impressive public awareness campaign about the summit in a variety of languages, but only a few advertisements appearing in English contained any information about searches close to the security perimeter, and only a few of these ran prior to Regulation 233/10 taking effect. The information contained in the ads was incomplete. Nowhere was the public advised that it was now an arrestable offence not to provide identification or to answer police questions about why entry was sought to a secured area. Nowhere was the public advised that the police maintained the authority to search those who approached the security zone, even if they abandoned their attempts to enter or were denied entry. Nowhere was it disclosed that a special regulation had been passed to supplement police powers by obliging people to comply with police demands and directions or to face arrest. And no mention was ever made of the *Public Works Protection Act*.

262 Then there is the matter of the general public. I do not agree with the Ministry's assessment that the interests of stakeholders – other than its key stakeholder, which I presume to have been the Toronto Police Service – were moderate. By supporting the use of the *Public Works Protection Act* through Regulation 233/10, the Ministry was promoting legislation that substantially limited the rights and freedoms of those living and working in the security zone, as well as protesters and others desiring access. As the G20 summit approached, the Ministry was busy monitoring Internet sites. It was well aware that demonstrators were being given rights advice, which, if followed after Regulation 233/10's enactment, could land unsuspecting protesters in jail. Apart from insiders in the government of Ontario, only members of the Toronto Police Service knew the rules of the game had changed, and they were the ones holding the deck of "go directly to jail" cards. For the Ministry to have remained silent in these circumstances, even after Regulation 233/10 was public and filed quietly on the government's e-Laws site, was unconscionable.

Figure 42: June 26 - Riot police walk by a burning patrol car.
(Photo by Frank Gunn, CP)

I Fought the Law and the Law Won

263 Technically, Regulation 233/10 was not "secret" legislation. It satisfied the legal requirements for publicizing regulations. All the formalities were observed. However, there is a distinction between complying with the minimum technical requirements of the law and acting prudently or even fairly. There is a *Charter* case that illustrates the point – *R. v. Yusuf*.[53]

264 Mr. Yusuf, like many other members of his Somali community, smoked khat, an African plant with narcotic properties. Khat was once used regularly by many Somali-Canadians socially and during religious worship. Mr. Yusuf imported khat into Canada openly, because it was legal – until May 14, 1997, when a regulation was passed under the *Controlled Drugs and Substances Act* making it illegal. The regulation was published in the *Canada Gazette*, but the federal government did nothing more to publicize the change. It could have informed community groups – groups known to assist Somali immigrants in understanding Canadian law – but it did not bother to do so. It relied instead on routine formal publishing of the regulation. Eight days after the regulation was passed, Mr. Yusuf went to pick up a package of khat at the airport, unaware of the change. He was arrested and charged with importing a controlled drug. This struck the judge as unfair, and he wouldn't have it. He held that where a regulation has special effect on an identifiable group and there are channels of communication available, it is unfair to rely on publication in official legal registries. Fundamental justice requires fair notice, and fairness in this case required that more be done. The charge was thrown out.

265 To be sure, *Yusuf* is a controversial decision, for it is one of the few exceptions to the maxim that ignorance of the law is no excuse. Yet the outcome is attractive and reasonable. It is fanciful to think that members of the public read e-Laws or the legal gazettes. They do not. Even lawyers don't spend their time reading these turgidly boring documents unless they have reason to research a specific question. It is not surprising then that the passage of Regulation 233/10 went largely unnoticed. Certainly the press – whose role it is to advance democracy by reporting on matters of public importance – did not pick up on Regulation 233/10 when its passage was published. Nor was it reasonable for the Ministry to assume that reporters would think to look up a regulation under an obscure piece of legislation.

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[53] *R. v. Yusuf*, [1998] O.J. No. 3975 (Ont. Prov. Ct.).

266 It is fair to assume that until June 24, when Mr. Vasey had the misfortune to be unwittingly caught in the Act, most protesters were similarly blithely ignorant of Regulation 233/10.

267 While communication breakdowns appear to have occurred between ISU partners, which added to the confusion and lack of disclosure surrounding Regulation 233/10, I believe that the Ministry had an independent responsibility to ensure the scope of the regulation was communicated to an unsuspecting public, not just after the Toronto Police Chief had mistakenly characterized its scope – and the media repeated this mistake – but as soon as it was passed; preferably while it was still under consideration. The Premier and former minister have acknowledged that more could have been done to ensure awareness of the actual scope of Regulation 233/10 after the misinformation was released. As some Ministry officials have now conceded, this was **not** "business as usual." Regulation 233/10 represented an unprecedented use of a largely unknown Act conveying exceptional powers. It therefore called for proactive public outreach to ensure that individuals were fully informed, **not** a low-key reactive communications strategy.

268 The lack of adequate notice had other adverse affects. Whether or not I am right about the authority for issuing Regulation 233/10 or its constitutional validity, others deserved the opportunity to challenge it before it expired and became moot. There should have been an opportunity to have it tested in court. There is a notorious problem in vindicating civil liberties claims in protest cases. During a protest, governments and police officers can adopt illegal strategies to limit protest, because by the time legal action can be taken, those strategies will have played themselves out. The protest will be over and the illegal strategy will have been implemented. There is a whiff of this in the internal OPP email communication where an OPP superintendent wanted to hold back on using the *Public Works Protection Act* for a critical time because it would not likely stand up to constitutional challenge after it had been used. Moreover, persons are often arrested in contentious circumstances during protests but then not charged, so that the legality of the arrest is not apt to be litigated. If a government is going to enact special temporary legislation for pending protest situations that skirts the periphery of constitutional validity, it should do everything possible to facilitate challenges to it, including ensuring that the legislation is widely known. It is unreasonable to rely on e-Laws services and legal gazettes.

269 Protesters and civil liberties advocates challenged the use of long-range acoustical devices when they learned they might be deployed at the G20 summit. They should have had a similar chance to try to stem, in advance, any damage that Regulation 233/10 might do to the ability to enjoy the constitutional right of freedom of expression and to protect protesters from arbitrary arrest.

270 The failure to publicize the authority this special regulation conferred also defeated the reasonable expectation of members of the public. This law subverted the ordinary order of things and created a legal obligation on individuals to give their names and state their reason for seeking entry into a secured area and to submit to a search, and it created an offence for failing to do so. It deprived people of the option of abandoning their efforts at entry in order to refrain from identifying themselves or answering or being searched. And it created unusual powers of arrest. The failure to publicize these implications of Regulation 233/10 created a trap for protesters who attempted to insist on their legal rights.

271 Protest situations are inherently volatile. It is critically important that police powers be clear, to minimize the prospects of challenge by protesters who think that police are acting illegally. Every effort should be made to reduce tension and distrust. The risks presented by the G20 meetings for tension and distrust should have been obvious. The Ontario government should have reduced those risks by ensuring the effective dissemination of complete and accurate information.

272 Not unlike the *Yusuf* case, the unique context in which Regulation 233/10 was passed made effective publicity entirely possible. There were known protest organizers who could have been contacted. More importantly, this was a special event taking place in a geographically limited area. As the City of Toronto's efforts to ensure efficient traffic flow demonstrate, public and community newspapers and flyers can reach those likely to be affected. Regulation 233/10, with all of its implications, should have been widely publicized. It was not reasonable in the circumstances of the G20 protests to have failed to do so.

Conclusion

273 It is therefore my conclusion, pursuant to subsection 21(1) of the *Ombudsman Act*, that the Ministry of Community Safety and Correctional Services promoted a regulation that "appears to be contrary to law" and not "in accordance with the provisions of any Act." It was also unreasonable to support the adoption of that regulation, given that it conferred unnecessary and constitutionally suspect police powers in the volatile and confrontational context of inevitable public protest. Moreover, the Ministry of Community Safety and Correction Services unreasonably and unjustly failed, in advance of its enactment, to ensure both proper consultation with stakeholders and that the citizens of this province were aware of the highly exceptional police authority that had been conferred.

274 The government has already announced that the *Public Works Protection Act* will be reviewed, with full input from stakeholders. This is a welcome step in the right direction. I am making two specific recommendations that I believe should be considered in the context of this review.

275 My third recommendation is intended to address the Ministry's failure to ensure proper communication of a regulation that effectively increased police powers. Generally, police authority is conferred through enactment of legislation, accompanied by the openness, transparency, and accountability inherent in the democratic system of government. There is a real and insidious danger associated with using subordinate legislation, passed behind closed doors, to increase police authority, and I believe that this practice should be sedulously avoided. However, I recognize that there may be rare, urgent and pressing circumstances that justify using a regulation to bolster police authority. In the event that this occurs, it is imperative that the public be properly advised. In fact, in any case where police powers are extended, and particularly in protest situations, I believe that the public should be fully informed.

Recommendations

Accordingly, I am making the following recommendations:

Recommendation 1:
The Ministry of Community Safety and Correctional Services should take steps to revise or replace the *Public Works Protection Act*. If the government wants to claim the authority to designate security areas to protect persons, an integrated statute should be created that could be used not only to protect public works but also provide proper authority for ensuring the security of persons during public events when required.

Recommendation 2:
The Ministry of Community Safety and Correctional Services should examine whether the range of police powers conferred by the *Public Works Protection Act* should be retained or imported into any revised statute, including whether it is appropriate to give police the authority to arrest those who have already been excluded entry to secured areas, and whether it is appropriate to authorize guards and peace officers to offer conclusive testimony, whether right or wrong, about the location of security boundaries.

Recommendation 3:
The Ministry of Community Safety and Correctional Services should develop a protocol that would call for public information campaigns when police powers are modified by subordinate legislation, particularly in protest situations.

Recommendation 4:
The Ministry of Community Safety and Correctional Services should report back to my Office in six months' time on the progress in implementing my recommendations and at six-month intervals thereafter until such time as I am satisfied that adequate steps have been taken to address them.

Response

276 The Ministry of Community Safety and Correctional Services was provided with an opportunity to make representations concerning my preliminary findings, conclusion and recommendations. On November 1, 2010, the Minister responded, agreeing that the Ministry could have, and should have, handled the enactment of

Regulation 233/10 better and noting that in future it would take greater care to ensure that the Ontario public is given more adequate notice of regulation changes of this nature.

277 The Minister also confirmed on behalf of the government his unequivocal commitment to act on all of my recommendations in a timely manner.

278 He noted that Mr. McMurtry would be considering my report and recommendations during his review of the provisions of the *Public Works Protection Act* and offered his personal undertaking, as Minister, to clearly and promptly communicate to the public any regulation or other changes to the Act that may arise prior to receiving Mr. McMurtry's advice.

279 A copy of the Minister's response is attached at Appendix E.

280 I am satisfied with the Minister's response to my Report and will monitor the Ministry's progress in implementing my recommendations.

André Marin
Ombudsman of Ontario

Appendix A: YouTube Videos

APPENDIX A

YouTube Videos

References to Public Works Protection Act

1. Videos relating to the arrest of Charlie Veitch under s. 5(1) of the *Public Works Protection Act*.
(a) http://www.youtube.com/watch?v=g_mTMhn8iiM
(b) http://www.youtube.com/watch?v=rq9ruy4WeKM&feature=related

2. Videos of a man being stopped by police and asked to produce identification under the *Public Works Protection Act*. He questions the legality of it, and is informed he will be arrested if he does not comply. The incident appears to take place inside the fence.
(a) http://www.youtube.com/watch?v=8fRvFvoobhE&feature=related
(b) http://www.youtube.com/watch?v=7RUjNRikaJM

3. Video of a police officer speaking "on behalf of the service" and answering questions on the "public works area."
http://www.youtube.com/user/ReetReeter#p/a/u/1/KB5qaq5u1QA

4. Videos from the Toronto Police Service YouTube site prior to the G20 summit, discussing parking, identification checks, but not the *Public Works Protection Act*.
(a) http://www.youtube.com/watch?v=trivRHgShiM
(b) http://www.youtube.com/watch?v=Xtj3oBlZQjU&feature=related

5. Video of the Council of Canadians measuring and questioning the "five-metre rule" outside the security fence downtown on Wellington and John streets. The clip also shows searches at Allan Gardens.
http://www.youtube.com/watch?v=-COwy3r66pA

Identification and property search requests

6. YouTube mini-documentary on requests for identification in downtown Toronto under the *Public Works Protection Act*. The filmmaker was asked to produce identification on Cherry Beach, 3.6 kilometres outside the security zone.
http://www.youtube.com/watch?v=UE1UZWrfMJ8&feature=related

7. Video of a police officer asking for identification from a person he says he saw outside the security fence the day before. The officer states that he saw the person "looking at [him] yesterday."
http://www.youtube.com/watch?v=Rx5bcYtY__Y

8. Video from Monday, June 21, 2010, including commentary by a photographer who was asked for identification and threatened with arrest on Spadina Ave. He says six police officers surrounded and detained him, then took his identification.
http://www.youtube.com/user/CrucialMatters#p/search/3/-HO5RM9vKEc

9. Video of a group of police officers speaking with people at University Ave. and King St., requesting to search their bags. One person refuses and is told to leave the area or be arrested. The person questions the officers' instructions in relation to his rights as a Canadian citizen and is told by an officer: "This isn't Canada right now" and "there is no civil rights here in Ontario, how many times do you have to be told that?"
http://www.youtube.com/watch?v=RjVtsuoPlzk&feature=related

10. Video of a protester at Allan Gardens questioning police to clarify what legislation gives them authority to search his bag and interfere with his rights to enter a public park and participate in a peaceful protest. His goggles are confiscated.
http://www.youtube.com/watch?v=HZgjX5vHt2o&NR=1

11. Video of a man being stopped on June 27 while participating in the "Critical Mass Cycle" event. When he questions police, he is informed that "the rules today are changed, they are different, you need to stop, we are going to search you and search your bags." His bags are checked, goggles are found in his possession, and he is arrested and sent to the detention centre.
http://www.youtube.com/watch?v=ngcPPd9_qgc

12. Video of man being searched at Carlton and Jarvis streets.
http://www.youtube.com/user/TheRealNews#p/u/14/wugz_f5jce0

13. Video of police officer conducting a backpack search, while a woman clearly states that she does not consent to his actions.
http://www.youtube.com/watch?v=1_DBPREuWUA

14. Video of two women being searched by police at University Ave. and King St. An officer states that he is allowed to detain people for investigative purposes pursuant to the *Criminal Code*, if he has articulable cause. He indicates that investigative detention allows him to search a person for a weapon.
http://www.youtube.com/user/guasapa#p/u/17/te03CxgpV00

15. Video of a search at Bloor and St. George streets.
http://www.youtube.com/watch?v=VVJyQbvMhRw&feature=related

Witness Accounts/Testimony of Arrests and Surrounding Circumstances

16. Video of two men arrested prior to the G20 summit for failure to show identification in the downtown area (6-minute mark).
http://www.youtube.com/user/weavingspider#p/u/26/XNNSXHT3FTA

17. Video of a woman blowing bubbles in the vicinity of police officers. An officer tells her, "if a bubble touches me, you are going to be arrested for assault." She is later shown being arrested.
http://www.youtube.com/user/TheRealNews#p/u/8/PGMTm3QRwEc

18. Videos shot on College St. after police arrested a deaf man for failing to comply with police instruction.
(a) http://www.youtube.com/user/ReetReeter#p/a/u/2/aWmpBFig4Z4
(b) http://www.youtube.com/user/TheRealNews#p/u/31/D7OA920pbv8

19. Video of man being searched in Yorkvile on June 27.
http://www.youtube.com/user/TheRealNews#p/u/17/uQYXH5gc6N0

20. Video of woman being detained and arrested at Queen's Park:
http://www.youtube.com/user/TheRealNews#p/u/12/Yd5K-TfEeyU

21. Video of man saying, "I have no trust in the police or the system after this" and volunteering to be arrested to get out from the police riot barrier.
http://www.youtube.com/watch?v=nIC--bUfM-E

22. Video of woman being arrested during the mass arrests outside the Novotel on the Esplanade.
http://www.youtube.com/watch?v=rNrkxyjaPx8&feature=related

23. Video of news producer's arrest while covering the events at Queen's Park.
http://www.youtube.com/watch?v=AoNAb9L-fYY&feature=related

Media Reports of Community Impact

24. Real News Network video of residents relating to mass arrest in Parkdale.
http://www.youtube.com/user/TheRealNews#p/u/8/bVwXOKZh4Os

25. Video of Steve Paikin, host of TVO's *The Agenda*, interviewed by Real News Network on the mass arrests and police actions at the Novotel.
http://www.youtube.com/user/TheRealNews#p/search/3/DCWNqMV4Bgs

26. Video of man being arrested and detained during the mass arrests outside the Novotel.
(a) http://www.youtube.com/watch?v=57utIU1j8oU&feature=related
(b) http://www.youtube.com/watch?v=ZSWRNKmY6DI&feature=related

27. Firsthand account of a man who was arrested and detained at the Eastern Avenue Detention Centre.
http://www.youtube.com/watch?v=Ntcr5E_LE7M&feature=related

Related Videos

28. Video of crowd singing *O Canada* before being rushed by the police in riot gear on Queen St West.
http://www.youtube.com/watch?v=rvXSpnG7E2g

29. Video of woman hit by projectile outside the Eastern Avenue Detention centre.
http://www.youtube.com/watch?v=3QxIcMSJJNo

30. Video of protesters offering police officers copies of the *Charter*, which they decline.
http://www.youtube.com/user/SupportLocalScene#p/a/u/1/DgNGYIcWM0o

31. Video of protester being knocked down as mounted officers move in.
http://www.youtube.com/watch?v=5-p64RHqi38

Appendix B: Public Works Protection Act

Ontario

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e-Laws

Français

Public Works Protection Act

R.S.O. 1990, CHAPTER P.55

Consolidation Period: From December 31, 1990 to the e-Laws currency date.

No amendments.

Definitions

1. In this Act,

"guard" means a guard appointed under this Act; ("gardien")

"highway" means a common or public highway or a part thereof, and includes any street, bridge and any other structure incidental thereto and any part thereof; ("voie publique")

"public work" includes,

(a) any railway, canal, highway, bridge, power works including all property used for the generation, transformation, transmission, distribution or supply of hydraulic or electrical power, gas works, water works, public utility or other work, owned, operated or carried on by the Government of Ontario or by any board or commission thereof, or by any municipal corporation, public utility commission or by private enterprises,

(b) any provincial and any municipal public building, and

(c) any other building, place or work designated a public work by the Lieutenant Governor in Council. ("ouvrage public") R.S.O. 1990, c. P.55, s. 1.

Guards, appointment

2. (1) For the purpose of protecting a public work, guards may be appointed by,

(a) the Solicitor General;

(b) the Commissioner of the Ontario Provincial Police Force;

(c) any inspector of the Ontario Provincial Police Force;

(d) the head or deputy head of the municipal council or the chief of police of the municipality in which the public work is located, or the person acting in the place or stead of the head or deputy head;

(e) the chair or other person who is the head of a board, commission or other body owning or having charge of the public work, or the person acting in the place or stead of the chair or other person.

Powers of guard

(2) Every person appointed as a guard under this section has for the purposes of this Act the powers of a peace officer.

Duties of guard

(3) Subject to the regulations and to any special direction of the Solicitor General or the Commissioner of the Ontario Provincial Police Force, every guard shall obey all directions of the person appointing him or her, any inspector of the Ontario Provincial Police Force, the chief of police of the municipality in which is located the public work that he or she is protecting, and the person who is in charge of the protecting of the public work.

Breach of duty of guard

(4) Every guard who,

(a) neglects or refuses to obey a direction that he or she is required to obey under subsection (3);

(b) fails in any manner to carry out his or her duties as guard;

(c) leaves the location to which he or she is assigned as guard or ceases to act as guard without leave of any of the persons mentioned in subsection (3); or

(d) otherwise conducts himself or herself in a manner not consistent with his or her duties as guard,

is guilty of an offence and on conviction is liable to a fine of not more than $500 or to imprisonment for a term of not more than two months, or to both. R.S.O. 1990, c. P.55, s. 2.

Powers of guard or peace officer

3. A guard or peace officer,

(a) may require any person entering or attempting to enter any public work or any approach thereto to furnish his or her name and address, to identify himself or herself and to state the purpose for which he or she desires to enter the public work, in writing or otherwise;

(b) may search, without warrant, any person entering or attempting to enter a public work or a vehicle in the charge or under the control of any such person or which has recently been or is suspected of having been in the charge or under the control of any such person or in which any such person is a passenger; and

(c) may refuse permission to any person to enter a public work and use such force as is necessary to prevent any such person from so entering. R.S.O. 1990, c. P.55, s. 3.

Statement under oath to be conclusive evidence

4.For the purposes of this Act, the statement under oath of an officer or employee of the government, board, commission, municipal or other corporation or other person owning, operating or having control of a public work, as to the boundaries of the public work is conclusive evidence thereof. R.S.O. 1990, c. P.55, s. 4.

Refusal to obey guard, etc.

5.(1)Every person who neglects or refuses to comply with a request or direction made under this Act by a guard or peace officer, and every person found upon a public work or any approach thereto without lawful authority, the proof whereof lies on him or her, is guilty of an offence and on conviction is liable to a fine of not more than $500 or to imprisonment for a term of not more than two months, or to both.

Arrest

(2)A guard or peace officer may arrest, without warrant, any person who neglects or refuses to comply with a request or direction of a guard or peace officer, or who is found upon or attempting to enter a public work without lawful authority. R.S.O. 1990, c. P.55, s. 5.

Regulations

6.The Lieutenant Governor in Council may make regulations,

(a) providing for the organization, co-ordination, supervision, discipline and control of guards;

(b) defining the areas that constitute approaches to public works, either generally or with regard to a particular public work;

(c) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. R.S.O. 1990, c. P.55, s. 6.

Français

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Appendix C: Regulation 233/10

Ontario

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e-Laws

Français

ONTARIO REGULATION 233/10

made under the

PUBLIC WORKS PROTECTION ACT

Made: June 2, 2010
Filed: June 14, 2010
Published on e-Laws: June 16, 2010
Printed in *The Ontario Gazette*: July 3, 2010

DESIGNATION OF PUBLIC WORKS

Designation

1. The following are designated as public works for the purposes of the Act:

1. Everything described in clause (a) of the definition of "public work" in section 1 of the Act that is located in the area described in Schedule 1, including, without limitation and for greater certainty, every sidewalk in that area.
2. The places described in paragraphs 1, 2 and 3 of Schedule 2.

Revocation

2. This Regulation is revoked on June 28, 2010.

Commencement

3. This Regulation comes into force on the later of June 21, 2010 and the day it is filed.

SCHEDULE 1
AREA REFERRED TO IN PARAGRAPH 1 OF SECTION 1

The area in the City of Toronto lying within a line drawn as follows:

Beginning at the curb at the southeast corner of Blue Jays Way and Front Street West; then north to the centre of Front Street West; then east along the centre of Front Street West to the east curb of Windsor Street; then north along the east curb of Windsor Street to the centre of Wellington Street; then east along the centre of Wellington Street to the centre of Bay Street; then south along the centre of Bay Street to a point directly opposite the north wall of Union Station; then west along the exterior of the north wall of Union Station to the centre of York Street; then south along the centre of York Street, continuing east of the abutments under the railway overpass, and continuing south along the centre of York Street to the centre of Bremner Boulevard; then west along the centre of Bremner Boulevard to the east curb of Lower Simcoe Street; then south along the east curb of Lower Simcoe

Street to the north curb of Lake Shore Boulevard West; then west along the north curb of Lake Shore Boulevard West to the south end of the walkway that is located immediately west of the John Street Pumping Station and runs between Lake Shore Boulevard West and the bus parking lot of the Rogers Centre; then north along the west edge of that walkway to the bus parking lot of the Rogers Centre; then west along the south edge of the bus parking lot of the Rogers Centre to the west edge of the driveway running between the parking lot and Bremner Boulevard; then north along the west edge of that driveway to the north curb of Bremner Boulevard; then west along the north curb of Bremner Boulevard to the east curb of Navy Wharf Court; then north along the east curb of Navy Wharf Court to the southwest point of the building known as 73 Navy Wharf Court; then east along the exterior of the south wall of that building; then north along the exterior of the east wall of that building to the curb of Blue Jays Way; then north along the east curb of Blue Jays Way to the curb at the southeast corner of Blue Jays Way and Front Street West.

SCHEDULE 2
DESIGNATED PLACES REFERRED TO IN PARAGRAPH 2 OF SECTION 1

1. The area, within the area described in Schedule 1, that is within five metres of a line drawn as follows:

   Beginning at the south end of the walkway that is located immediately west of the John Street Pumping Station and runs between Lake Shore Boulevard West and the bus parking lot of the Rogers Centre; then north along the west edge of that walkway to the bus parking lot of the Rogers Centre; then west along the south edge of the bus parking lot of the Rogers Centre to the west edge of the driveway running between the parking lot and Bremner Boulevard; then north along the west edge of that driveway and ending at Bremner Boulevard.

2. The area, within the area described in Schedule 1, that is within five metres of a line drawn as follows:

   Beginning at the southwest point of the building known as 73 Navy Wharf Court; then east along the exterior of the south wall of that building; then north along the exterior of the east wall of that building and ending at the curb of Blue Jays Way.

3. The below-grade driveway located between Union Station and Front Street West and running between Bay Street and York Street in the City of Toronto.

Français

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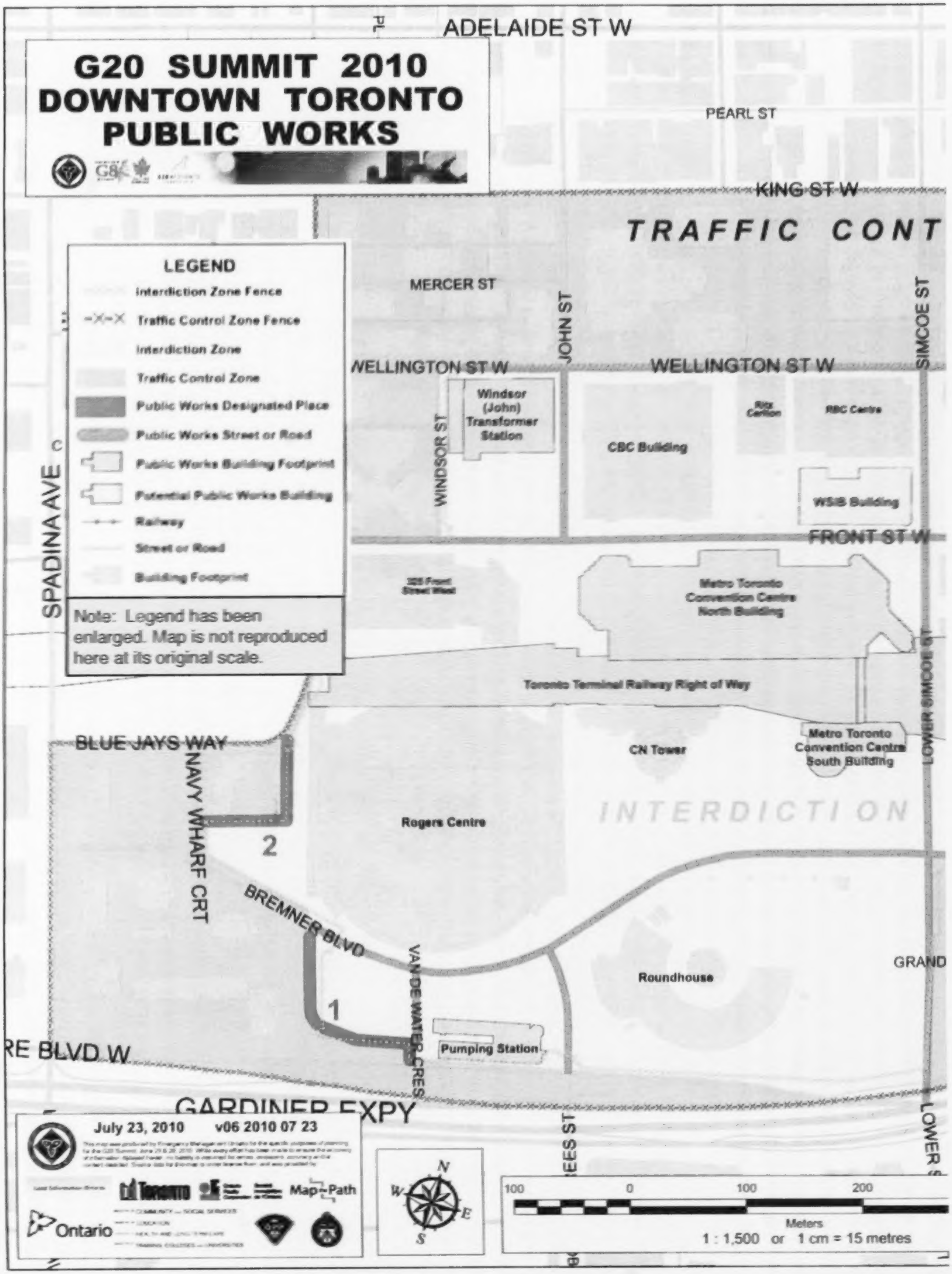
Appendix D: Map of Public Works in G20 Security Zone

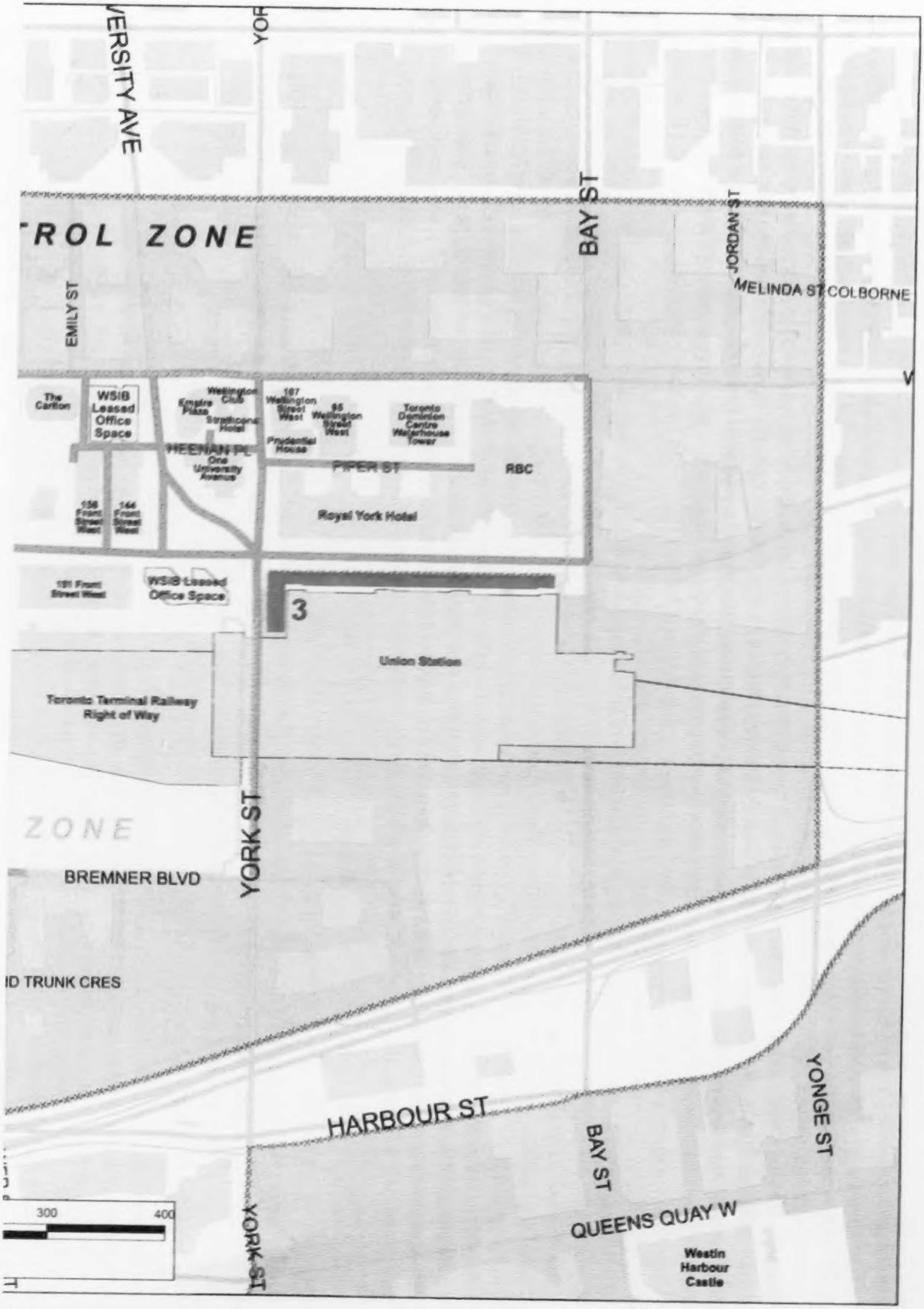
G20 SUMMIT 2010 DOWNTOWN TORONTO PUBLIC WORKS


ADELAIDE ST W
PL
PEARL ST
KING ST W
TRAFFIC CONT
MERCER ST
JOHN ST
SIMCOE ST
WELLINGTON ST W
WELLINGTON ST W
Windsor (John) Transformer Station
WINDSOR ST
CBC Building
Ritz Carlton
RBC Centre
WSIB Building
FRONT ST W
SPADINA AVE
C
225 Front Street West
Metro Toronto Convention Centre North Building
Toronto Terminal Railway Right of Way
LOWER SIMCOE ST
BLUE JAYS WAY
NAVY WHARF CRT
CN Tower
Metro Toronto Convention Centre South Building
INTERDICTION
Rogers Centre
2
BREMNER BLVD
VAN DE WATER CRES
GRAND
Roundhouse
1
RE BLVD W
Pumping Station
GARDINER EXPY
REES ST
LOWER S
LEGEND
Interdiction Zone Fence
Traffic Control Zone Fence
Interdiction Zone
Traffic Control Zone
Public Works Designated Place
Public Works Street or Road
Public Works Building Footprint
Potential Public Works Building
Railway
Street or Road
Building Footprint
N
W
E
S
100
0
100
200
Meters
Map~Path
Ontario

Note: Legend has been enlarged. Map is not reproduced here at its original scale.

July 23, 2010 v06 2010 07 23

1 : 1,500 or 1 cm = 15 metres


VERSITY AVE
YOR
TROL ZONE
BAY ST
JORDAN ST
MELINDA ST
COLBORNE
EMILY ST
V
The Carlton
WSIB Leased Office Space
Empire Plaza
Wellington Club
Strathcona Hotel
187 Wellington Street West
95 Wellington Street West
Toronto Dominion Centre Waterhouse Tower
Prudential House
HEENAN PL
One University Avenue
PIPER ST
RBC
158 Front Street West
144 Front Street West
Royal York Hotel
181 Front Street West
WSIB Leased Office Space
3
Union Station
Toronto Terminal Railway Right of Way
ZONE
BREMNER BLVD
YORK ST
ID TRUNK CRES
HARBOUR ST
BAY ST
YONGE ST
300
400
QUEENS QUAY W
YORK ST
Westin Harbour Castle

Appendix E: Response from Ministry of Community Safety and Correctional Services

Ministry of Community Safety
and Correctional Services

Office of the Minister

25 Grosvenor Street
18th Floor
Toronto ON M7A 1Y6
Tel: 416-325-0408
Fax: 416-325-6067

Ministère de la Sécurité communautaire
et des Services correctionnels

Bureau du ministre

25, rue Grosvenor
18e étage
Toronto ON M7A 1Y6
Tél. : 416-325-0408
Téléc. : 416-325-6067

Ontario

CU10-04906

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OMBUDSMAN ONTARIO
SORT

November 1, 2010

Mr. André Marin
Ombudsman
Office of the Ombudsman of Ontario
10th Floor, South Tower
483 Bay Street
Toronto ON M5G 2C9

Dear Mr. Marin:

Thank you for providing me with your draft report on the investigation of Regulation 233/10 made under the *Public Works Protection Act* (PWPA).

I have thoroughly reviewed the Report and appreciate the concerns you have identified regarding the implementation and communication of Regulation 233/10. In particular, I want to convey my agreement with your view that the ministry could have, and should have, handled the enactment of Regulation 233/10 better. In future, we will take greater care to ensure that the Ontario public is given more adequate notice of regulation changes of this nature.

I would also like to thank you for the recommendations you have provided to address those concerns, and to confirm on behalf of the government my unequivocal commitment to act on each of your four recommendations in a timely manner.

As you have noted in your draft report, I recently asked former Ontario Chief Justice Roy McMurtry to lead a detailed review of the provisions of the PWPA in order to provide recommendations for amendment of the legislation. His mandate allows him to give the government specific advice on the first three of your draft recommendations.

Under the review's terms of reference, Mr. McMurtry has been explicitly asked to consider your report and recommendations in developing his advice to the government. I am confident that your investigation will prove to be a valuable resource to Mr. McMurtry in his review, just as his report will aid in the government's implementation of your recommendations.

With respect to your final recommendation, my ministry is committed to report back to your office at six-month intervals regarding the progress we have made in implementing your recommendations.

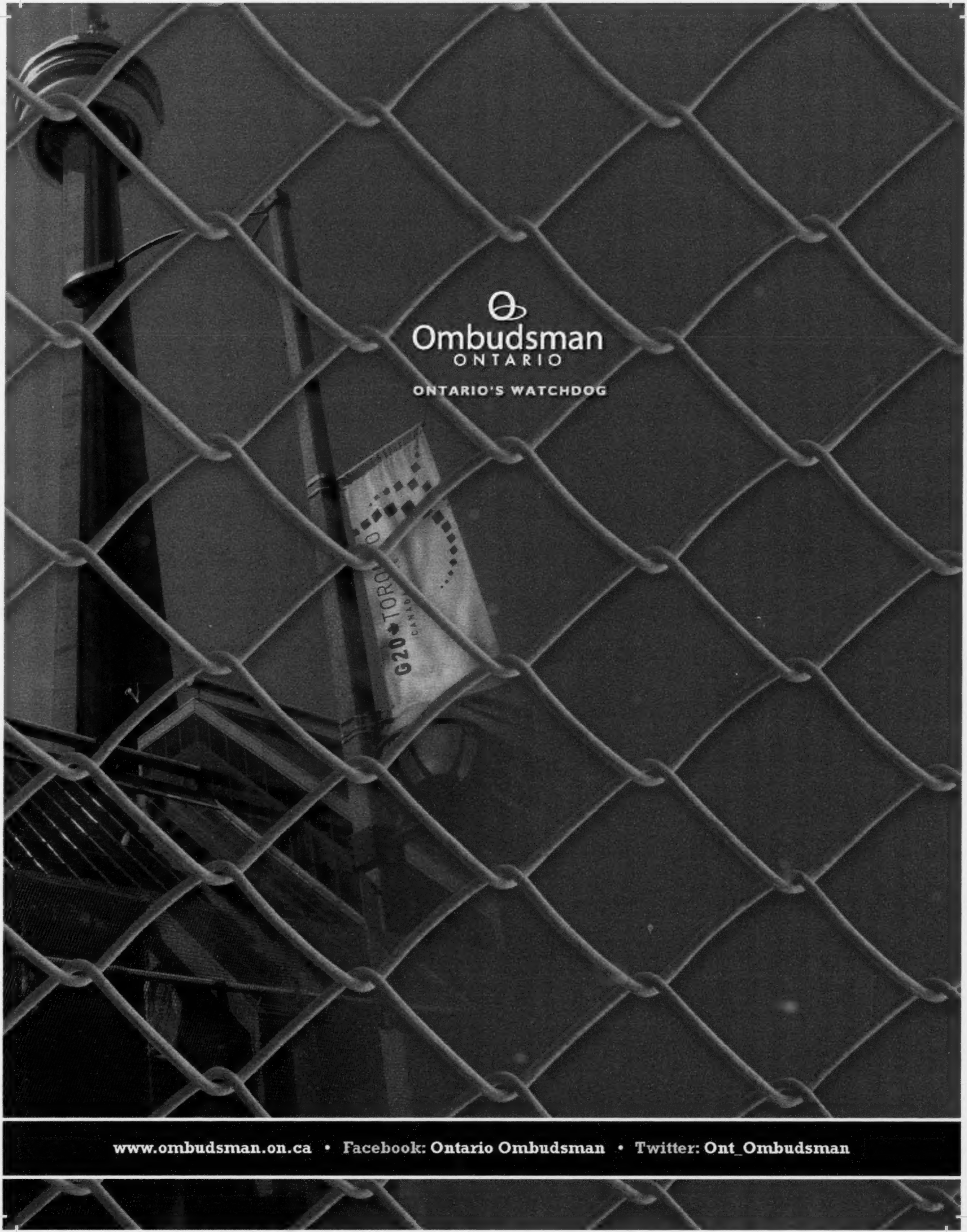
Finally, I would also like to offer my personal undertaking, as the Minister of Community Safety and Correctional Services, to clearly and promptly communicate to the public any regulation or other changes to the PWPA that may arise prior to receiving Mr. McMurtry's advice.

Thank you for the opportunity to respond to your report.

Yours sincerely,

Jim Bradley

Jim Bradley
Minister


G20 TORONTO CANADA

Ombudsman
ONTARIO

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